3-2-92
Vol. 57 No. 41

federal register

Monday
March 2, 1992

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

3-2-92
Vol. 57 No. 41
Pages 7315-7530

federal register

Monday
March 2, 1992

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 57 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–2235
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–2235
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 57, No. 41
Monday, March 2, 1992

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 57, No. 41
Monday, March 2, 1992

Presidential Documents

Title 3—

The President

Presidential Determination No. 92–15 of February 18, 1992

Determination To Permit Export-Import Bank Financing for Exports to the Government of South Africa or Its Agencies

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 2(b)(9) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(9)) (the "Act"), I hereby:

1) determine that significant progress toward the elimination of apartheid has been made in South Africa;

2) authorize and direct you to transmit to the Congress a statement describing and explaining this determination.

You are further authorized and directed to publish this memorandum in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, February 18, 1992.

[FR Doc. 92–4973
Filed 2–27–92; 4:43 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 92–16 of February 18, 1992

Foreign Assistance for Angola

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1), I hereby:

(1) determine that it is important to the security interests of the United States to furnish assistance described in paragraphs (2) and (3) below notwithstanding section 512 of the Foreign Operations, Export Financing, and Related Programs Appropriation Act, 1991 (Public Law 101–513); section 512 as applied to fiscal year 1992 pursuant to the Joint Resolution making continuing appropriations for fiscal year 1992, and for other purposes (Public Law 102–145); other acts making appropriations for foreign operations, export financing, and related programs for fiscal year 1992; and any other provision of law within the scope of section 614(a)(1);

(2) authorize the furnishing of up to $1.5 million of Economic Support Funds made available for fiscal year 1991 for support for democratization in Angola; and

(3) authorize the furnishing of up to $13 million from funds made available for the Development Fund for Africa for fiscal year 1992 for support for democratization in Angola and to address other pressing needs in Angola in the period until elections are completed.

You are hereby directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, February 18, 1992.

[FR Doc. 92–4974
Filed 2–27–92; 4:44 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 57, No. 41
Monday, March 2, 1992

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 430

RIN 3206-AE81

Performance Management System

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation designed to enhance effective performance management for General Schedule and Prevailing Rate employees. The regulation reflects OPM's continuing interest in providing flexibility to agencies and will permit agencies to implement personnel policies that are appropriate for their particular performance contexts and consistent with good management practices.

In issuing this regulation, OPM emphasizes that (a) there is no requirement that agencies use the regulation to change the number of summary rating levels now in their performance management system plans and (b) agencies considering a change in the number of summary rating levels should carefully assess all implications of such a change before doing so, especially the relationship of a change to the administration of any ongoing or anticipated RIF activity.

EFFECTIVE DATE: April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Margaret M. Higgins (202) 606-2720 or FTS 266-2720.

SUPPLEMENTARY INFORMATION: On September 25, 1991, at 56 FR 48444, OPM published a proposed regulation with a 30-day comment period that eliminates the requirement for five summary rating levels for General Schedule (GS) and Prevailing Rate (WG) employees. Instead, it allows for at least three, and not more than five, summary rating levels. The rating levels must include "Fully Successful" and "Outstanding" levels, or equivalent terms, and an "Unacceptable" level.

OPM is undertaking a comprehensive review of both the Performance Management System and the Performance Management and Recognition System (PMRS). Along with other sources of ideas and recommendations, this review is giving serious consideration to the recommendations in the reports of two statutory committees, the Pay-for-Performance Labor-Management Committee and the PMRS Review Committee, and to the report of the National Academy of Sciences, *Pay for Performance: Evaluating Performance Appraisal and Merit Pay.* This particular regulation change is being made at this time because it is consistent with recommendations in those reports that the Federal Government's performance management systems allow for more flexibility at the agency level. In addition, several agencies have expressed a specific intent to use this flexibility if provided.

This final regulation would not change the rules governing additional service credit for performance in determining an employee's retention standing for reduction-in-force (RIF) purposes. OPM will assess the plans and experiences of agencies that decide pursuant to this regulation to reduce the number of summary rating levels they use from five to four or three. Based on that assessment, OPM will provide any necessary guidance related to the granting of additional service credit based on performance.

During the comment period, which ended October 25, 1991, OPM received 55 comments: 18 from Federal agencies and departments or their components, 5 from unions or employee groups, and 32 from individual employees. All the Federal agencies and departments responding favored the proposed flexibility. Three employee groups favored the proposed flexibility and two opposed it. Three individuals favored and 14 opposed. Fifteen of the 32 individual responses expressed concern about the performance appraisal system and RIF in general and did not address the proposed change to the regulations. Following are the identification of the major issues raised, a summary of comments, and a discussion of OPM rationale for any changes being made.

1. Performance Rating Credit for RIF Retention

Summary of Comments: Several responses (six agencies, one employee group, and four individuals) expressed concern about the effect different numbers of summary rating levels would have in determining RIF retention.

Discussion: Agencies identify the competitive areas, or boundaries, within which employees compete for retention under RIF procedures. OPM expects that employees within a competitive level, where initial RIF competition occurs and where performance has its greatest impact, will have ratings of record based on the same number of summary rating levels.

There may be some advantage or disadvantage for an individual employee who has transferred from another organization that uses a different number of summary rating levels. Also, some advantage or disadvantage could occur during the second round of RIF competition if the agency uses a master retention register that mixes all PMRS and non-PMRS employees in the same subgroup.

If agencies are anticipating a RIF, they must remember the relationship between their performance appraisal and RIF programs and address these issues when establishing their RIF procedures. In addition, any agency facing serious downsizing actions should consider carefully the advisability of changing its performance appraisal program at such a sensitive and critical time.

Change: No change.

2. Disparate Treatment Between Supervisors and Non-Supervisors

Summary of Comments: Some responses (three individuals and one employee group) indicated a belief that the new flexibility singles out non-managerial employees for adverse treatment during a RIF since they may be under three-level systems while managerial/supervisory, i.e., PMRS, employees will remain under five-level systems. Several agencies (6) appear to be aware of this perception and commented that, while they favor the additional flexibility, they would not implement it until they could make

similar changes to the PMRS and Senior Executive Service (SES) systems.

Discussion: These regulations are not intended to disadvantage any specific group of employees during a RIF. Managerial/supervisory (PMRS) employees and non-managerial (GS/WG) employees do not compete with each other for retention during the first round of a RIF. OPM regulations specify that separate competitive levels must be established for each of these employee groups (5 CFR 351.403(b)(5)). The regulations also specify that GS and WG employees cannot be in the same competitive level (5 CFR 351.403(b)(3)).

OPM can make these regulatory changes with respect to GS/WG employees because there are no statutory requirements for these groups of employees regarding summary rating levels. Since five summary rating levels are specified in law for PMRS and a different three are specified in law for SES (i.e., Unsatisfactory, Minimally Satisfactory, and Fully Successful), OPM cannot make similar changes to these systems at this time. As OPM reviews all programs related to pay-for-performance in the Federal Government, opportunities for additional agency flexibility will be studied. In the meantime, use of different numbers of summary rating levels for different employee groups is optional, and agencies can choose to maintain five summary rating levels for all employees if they feel that consistency between systems is of primary importance in their agency.

Change: No change.

3. Desirable Number of Summary Rating Levels

Summary of Comments: All 18 Federal agencies responding favored the change to flexibility. Support for keeping the five-level system was expressed in responses from 13 individuals and 2 employee groups, and 3 specifically mentioned the desirability of being able to differentiate performance more precisely. On the other hand, three individuals and three employee groups favored the use of a three-level system, with one group making strong arguments that making finer distinctions in their organizational context was meaningless. Other individual responses (15) did not address the issue of the number of rating levels, but expressed other concerns that reflected the belief that accurate distinctions of performance are not being made under the current system.

Discussion: This regulation provides each agency with limited flexibility to choose the number of rating levels it will use. Agencies may continue to use five summary rating levels where this degree of distinguishing among performance levels is feasible and desirable. Should an agency choose to change to a three-level rating system, performance ranges for the new levels will have to be defined and performance that would previously have been rated at one of the two rating levels that no longer exist in the new system (Minimally Acceptable and Exceeds Fully Successful) will have to be rated at one of the newly defined levels. The use of three rating levels envisions newly defined performance ranges with a middle level (Fully Successful or equivalent) that encompasses a very broad range of expected performance and the other two levels (Outstanding or equivalent and Unacceptable) that represent narrower ranges of exceptional performance.

Change: No change.

4. Relationship Between Performance Appraisal and RIF

Summary of Comments: Almost half (15 out of 32) of the individual responses did not address the number of summary rating levels. Rather, this group of comments reflected a strong rejection of the idea of granting additional years of service credit for RIF purposes based on the performance rating. Most of the comments identify this practice as a "tie breaker" and suggest that seniority be used in its place. These comments also tended to disapprove of the performance rating process itself and some recommended that performance ratings be dropped altogether.

Discussion: Performance ratings have played some kind of role in RIF retention since 1912. The current RIF regulations are based on the Veterans' Preference Act of 1944. This law (§ 3502 of title 5, United States Code) provides that the RIF regulations must state four factors to be used in releasing employees: (1) tenure of employment (i.e., type of appointment); (2) veteran preference; (3) length of service (i.e., seniority); and (4) performance ratings.

An averaging process is used to determine the additional years of service credit granted based on performance that then are combined with years of service to determine the employee's total length of service. This figure, together with the tenure group and veteran preference determination, determines the employee's position on the retention register, and employees are released from the bottom of the register first. The credit based on performance does not serve as a "tie breaker" for employees with equal years of service, but is one of four factors that, taken in combination, determine the employee's retention standing.

Change: No change.

5. Designating Performance Levels

Summary of Comments: One agency commented that there should be no Outstanding level required, but rather just a level of performance that exceeds the Fully Successful level. Another agency suggested that agencies be given full flexibility to determine performance levels other than Fully Successful. An office within OPM commented that Central Personnel Data File (CPDF) reporting requirements for the various performance levels should be cross-referenced for agency convenience.

Discussion: Should an agency adopt a three-level summary rating system, the top and bottom ratings are expected to represent ranges of exceptional performance and should be so defined. By including the provision for the use of equivalent terms, it is OPM's intent to permit agencies to name performance levels as they choose with the exception of the Unacceptable level, which is defined in law (5 U.S.C. 4301(3)).

To minimize any confusion between numeric and alphabetic references to the various performance levels, we have adopted the suggestion that CPDF reporting code requirements be cross-referenced.

Change: Section 430.204(i) has been revised.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because the change will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 430

Awards, Decorations, Government employees, Medals.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, the Office of Personnel Management amends title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

2. In § 430.204, paragraph (h) is revised, paragraphs (i) through (k) are redesignated as (j) through (l)

respectively, and a new paragraph (i) is added to read as follows:

§ 430.204 Agency performance appraisal systems.

* * * * *

(h) Each appraisal system shall provide for at least three and not more than five summary rating levels. The rating levels must include an "Unacceptable" level, a "Fully Successful" level, and an "Outstanding" level. Agencies may identify terms as equivalent to "Fully Successful" and "Outstanding" in their Performance Management Plans. Agencies also may use a rating level between "Fully Successful" and "Unacceptable" and a rating level between "Fully Successful" and "Outstanding."

(i) To provide for consistency of performance rating designations in referencing other related regulations, agencies will use the following levels: level 1 for "Unacceptable," level 3 for "Fully Successful" or its equivalent, and level 5 for "Outstanding" or its equivalent. A rating level between "Unacceptable" and "Fully Successful" will be designated level 2 and a rating level between "Fully Successful" and "Outstanding" will be designated level 4. Agencies should use the rating-of-record codes given in FPM Supplement 292–1, Personnel Data Standards, to report rating-of-record data to the CPDF.

* * * * *

[FR Doc. 92–4545 Filed 2–28–92; 8:45 am]

BILLING CODE 6325–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4110–1]

Indiana: Schedule of Compliance for Modification of Indiana's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region V.

ACTION: Notice of Indiana's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, the U.S. EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications, if they cannot meet the prescribed rule adoption deadlines. The U.S. EPA is today publishing a compliance schedule for Indiana to modify its authorized hazardous waste management program in accordance with § 271.21(g) to adopt Federal program modifications.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, HRM–7J, 77 West Jackson Blvd. Chicago, Illinois 60604, (312) 886–6134, (FTS 886–6134).

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization for a State to implement the Federal hazardous waste program within that State is granted by the U.S. EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). The U.S. EPA regulations for final authorization appear at 40 CFR 271.1–271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Indiana

Indiana initially received final authorization for its base RCRA program effective January 31, 1986, (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program effective December 31, 1986, (51 FR 39752–39754, October 31, 1986); January 19, 1988, (53 FR 128–129, January 5, 1988); September 11, 1989, (54 FR 29557–29559, July 13, 1989); September 23, 1991, (56 FR 33717–33719, July 23, 1991, and 56 FR 33866–33873, July 24, 1991); September 27, 1991, (56 FR 35831–35833, July 29, 1991); and September 30, 1991, (56 FR 36010–36012, July 30, 1991).

On January 16, 1992, Indiana submitted a request under the provisions of 40 CFR 271.21(g)(1)(V) for an extension of time in order to complete the necessary program revisions. Today's compliance schedule provides for Indiana to obtain program revisions for the following Federal program requirements found in the Code of Federal Regulations at title 40, parts 260 through 270 as of July 1, 1990:

- All Hazardous and Solid Waste Amendments (HSWA) of 1984 (Public Law 98–616, November 8, 1984) Cluster II provisions promulgated between July 8, 1987, and June 29, 1990.
- All non-HSWA Cluster VI provisions promulgated between January 4, 1989, and June 6, 1990.

The deadline under 40 CFR 271.21 for Indiana to adopt these Federal regulations was July 1, 1991. However the State's rulemaking has been delayed due to changes in its rulemaking procedures.

The State has agreed to obtain the needed program revisions according to the following schedule:

(1) Regulations approved by Indiana Governor by February 1992;

(2) Regulations filed with Indiana Secretary of State by February 1992;

(3) Regulations become effective by March 1992; and

(4) Regulations promulgated in Indiana Register by April 1992.

Accordingly, Indiana will be on a schedule of compliance until March 31, 1992, to adopt the required amendments of the subject rules package. Indiana's application to the U.S. EPA requesting authorization of the above-mentioned program revisions is expected to be submitted by March 1, 1992.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(B).

Dated: February 12, 1992.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 92–4775 Filed 2–28–92; 8:45 am]

BILLING CODE 6560–50–M

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Chapter XXIV

Fellowship Program Requirements

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Final rule.

SUMMARY: The following are the regulations governing the annual competition for James Madison Memorial Fellowships. They implement the James Madison Memorial Fellowship Act of 1986. The rules govern the qualifications, nominations, and applications of candidates for fellowships; the selection of fellows by the Foundation; the graduate programs fellows must pursue; the conditions attached to awards; and related requirements and expectations regarding fellowships.

EFFECTIVE DATE: March 9, 1992.

ADDRESSES: James Madison Memorial Fellowship Foundation, 2000 K Street NW., suite 303, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: James M. Banner, Jr., (202) 653–8700.

SUPPLEMENTARY INFORMATION: This rule reproduces the text of the proposed rule published in the **Federal Register** on September 11, 1991 (56 FR 46263), with the exception of minor changes in §§ 2400.52 and 2400.54. Specifically, in § 2400.52 the change clarifies the stipend payments for room, board, and books of Senior Fellows enrolled in a less than full-time graduate program. In § 2400.54, the change indicates that stipends will be paid to fellows rather than the institutions in which they are enrolled; furthermore, the requirement that fellows provide itemized receipts for books, room, and board, has been eliminated to minimize administrative burdens on the fellows and the Foundation. Two comments to the proposed rule were received. Since one comment proposed alterations in the proposed rule contrary to the provisions of the James Madison Memorial Fellowship Act, it could not be implemented in this final rule.

Under the James Madison Memorial Fellowship Act, the James Madison Memorial Fellowship Foundation could not begin to award fellowships unless and until $10 million were raised to support its fellowship programs or Congress provided legislative relief from this requirement. On November 26, 1991, Congress approved this legislative relief (Pub. L. 102–221), and the President signed the legislation on December 11, 1991. Therefore, this final rule is issued.

The James Madison Memorial Fellowship Act authorizes fellowship support for graduate study by teachers of American history and social studies and by college seniors or recent college graduates who wish to become teachers of the same subject. However, in order not to exclude from consideration for James Madison Fellowships those teachers or would-be teachers whose current or future secondary school instruction, while concerning the usual subjects covered by courses in American history and social studies, may be carried on in courses entitled "government" or similar names, this rule goes beyond the Act to apply to those teachers and would-be teachers who do or will offer secondary school instruction in American government.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply to this rule because it will not have a significant economic impact on a substantial number of small businesses. Consequently, an Initial Regulatory Flexibility Analysis need not be performed. Section 610 of the Act provides for periodic review of rules which have or will have a significant economic impact upon a substantial number of small businesses. In accordance with this provision, comments from small entities concerning these rules will be considered. Such comments must be submitted separately and cite 5 U.S.C. 601 et seq. in correspondence.

Sections 2400.14, 2400.21, 2400.53–54, and 2400.61–63 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the James Madison Memorial Fellowship Foundation has submitted a copy of forms required under these sections to the Office of Management and Budget for its review (40 U.S.C. 3540(h)). Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok. The annual public reporting burden for this collection of information is estimated to average 2 hours per response for an anticipated 1500 applicants.

List of Subjects in 45 CFR Part 2400

Education, Fellowships.

Dated: February 25, 1992.

Paul A. Yost, Jr.,

President.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 et seq., title 45 of the Code of Federal Regulations is amended to add a new chapter XXIV, consisting of part 2400 to read as follows:

CHAPTER XXIV—JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

PART 2400—FELLOWSHIP PROGRAM REQUIREMENTS

Subpart A—General.

Sec.

Subpart B—Nominations and Applications

Subpart C—Application Process

Subpart D—Selection of Fellows

Subpart E—Graduate Study

Subpart F—Fellowship Stipends

Subpart G—Special Conditions

Authority: 20 U.S.C. 4501 et seq.

Subpart A—General

§ 2400.1 Purposes.

(a) The purposes of the James Madison Memorial Fellowship Program are to:

(1) Provide incentives for master's degree level graduate study of the history, principles, and development of the United States Constitution by outstanding in-service high school teachers of American history, American government, and social studies and by outstanding college graduates who plan to become teachers of the same subjects; and thereby to

(2) Strengthen teaching in the nation's secondary schools about the framing and subsequent history of the United States Constitution.

(b) The Foundation may from time to time undertake other closely related activities to fulfill these goals.

§ 2400.2 Annual competition.

To achieve its principal purposes, the Foundation holds an annual competition to select high school teachers and college graduates to be James Madison Fellows.

§ 2400.3 Eligibility.

Individuals eligible to be nominated for, apply for, and hold a James Madison Fellowship are United States citizens, United States nationals, or permanent residents of the Northern Mariana Islands who are:

(a) Full-time high school teachers of American history, American government, or social studies who:

(1) Have at least three years of prior classroom experience as secondary school teachers;

(2) Are under contract, or can provide evidence of being under prospective contract, to teach full time as high school teachers of American history, American government, or social studies;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities and to professional and collegial activities within their schools and school districts;

(4) Are highly recommended by their department heads, school principals, school district superintendents, or other supervisors;

(5) Qualify for admission with graduate standing at accredited institutions of higher education of their choice that offer master's degree programs allowing at least 12 hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions of other forms of government;

(6) Are able to complete their proposed courses of graduate study within five years of part-time study during summers or in evening or weekend programs;

(7) Agree to attend, at the Foundation's expense, a four-week institute on the United States Constitution, if one is convened by the Foundation, normally during the summer following the commencement of their fellowships; and

(8) Sign agreements that, upon completing the education for which the fellowship is awarded, they will teach full time in secondary schools for a period of not less than one year for each full year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award.

(b) Those who aspire to become full-time secondary school teachers of American history, American government, or social studies who:

(1) Are matriculated college seniors pursuing their baccalaureate degrees full time or recipients of baccalaureate degrees no more than three years prior to the commencement of a fellowship who rank or ranked in the upper third of their graduating class or hold or held equivalent academic standing at those institutions that do not maintain or announce academic rankings;

(2) Plan to begin graduate study on a full-time basis;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities;

(4) Are highly recommended by faculty members, deans, or other persons familiar with their potential for graduate study of American history and government and their serious intention to enter the teaching profession as instructors of American history, American government, or social studies;

(5) Qualify for admission with graduate standing at accredited institutions of higher education of their choice that offer master's degree programs that allow at least 12 hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions and history of others forms of government;

(6) Are able to complete their proposed courses of graduate study within two years of full-time study;

(7) Agree to attend, at the Foundation's expense, a four-week institute on the United States Constitution, if one is convened by the Foundation, normally during the summer following the commencement of their fellowships; and

(8) Sign an agreement that, upon completing the education for which the fellowship is awarded, they will teach full time in secondary schools for a period of not less than one year for each full year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award.

§ 2400.4 Definitions.

As used in this part:

Academic year means the period of time in which a full-time student would normally complete two semesters, two trimesters, three quarters, or their equivalent of study.

Act means the James Madison Memorial Fellowship Act.

Fee means a typical and usual non-refundable charge by an institution of higher education for a service, privilege, or use of property which is required for a fellow's enrollment and registration.

Fellow means a recipient of a fellowship from the Foundation.

Fellowship means an award, called a James Madison Fellowship, made to a person by the Foundation for graduate study.

Foundation means the James Madison Memorial Fellowship Foundation.

Full-time student means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree toward which the student is working, in no more time than the length of time normally taken at the institution of higher education attended by the student.

Graduate study means the courses of study beyond the baccalaureate level which lead to a master's degree.

High school means grades 9 through 12.

Institution of higher education has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior fellowship means a James Madison Fellowship granted either to a college senior or to a college graduate who has received a baccalaureate degree no more than three years prior to the commencement of a fellowship and who seeks to become a secondary school teacher of American history, American government, or social studies for full-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

Master's degree means the first pre-doctoral graduate degree offered by an institution of higher education beyond the baccalaureate degree, for which a baccalaureate degree is a prerequisite.

Matriculated means formally enrolled in a master's degree program in an institution of higher education.

Resident means a person who has legal residence in the state, recognized under state law. If a question arises concerning a fellow's state of residence, the Foundation determines, for the purposes of this program, of which state the person is a resident, taking into account the fellow's place of registration to vote, parent's place of residence, and eligibility for in-state tuition rates at public institutions of higher education.

Satisfactory progress means a junior fellow's completion of the number of courses normally expected of full-time master's degree candidates at the institution of higher education that the fellow attends, and a senior fellow's completion each year of the number of courses toward a master's degree agreed upon each year by the Foundation as constituting that fellow's part-time course of study.

Secondary school has the same meaning given that term by section 1201(d) of the Higher Education Act of 1965 (20 U.S.C. 1141(d)).

Senior means a student at the academic level recognized by the institution of higher education as being in the last year of study before receiving the baccalaureate degree.

Senior fellowship means a James Madison Fellowship granted to a high school teacher of American history,

American government, or social studies for part-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Stipend means the amount paid to a fellow or to the educational institution that the fellow attends to cover the costs of graduate study under a fellowship.

Term means the period—semester, trimester, or quarter—used by an institution of higher education to divide its academic year.

Subpart B—Nominations and Applications

§ 2400.10 Nominations by schools and school districts.

All school districts and secondary schools in which teachers are currently employed may nominate high school teachers of American history, American government, or social studies as candidates for fellowships.

§ 2400.11 Number of nominees per school and school district.

Each independent and parochial school may nominate one high school teacher, and each school district may nominate up to three high school teachers for each annual competition.

§ 2400.12 Nominations by colleges.

All four-year colleges may nominate seniors and graduates who have received their baccalaureate degrees no more than three years prior to the commencement of fellowships as candidates for fellowships.

§ 2400.13 Number of nominees per college.

(a) Each college may nominate up to three seniors or graduates who have received their baccalaureate degrees no more than three years prior to the commencement of fellowships for each annual competition. Nominees may have legal residence in any state.

(b) If a college separately lists more than one component in the current edition of Educational Directory: Colleges and Universities, published by the United States Department of Education, each component may nominate up to three students. However, a component that is organized solely for administrative purposes and has no students may not nominate a student.

§ 2400.14 Nomination and application coordinators.

(a) Each school, school district, and college that chooses to nominate a candidate or candidates for fellowships must provide the Foundation with the name, business address, and business telephone number or a member of its faculty or staff who will administer and coordinate the nomination process at that institution.

(b) Nomination and application coordinators, with the assistance of written materials provided by the Foundation, publicize the fellowship competitions, establish systems for determining nominees, solicit recommendations of potential nominees, determine the willingness of potential nominees to apply for fellowships, forward the names and addresses of nominees to the Foundation by a stated deadline, and counsel nominees in preparing fellowship applications.

§ 2400.15 Direct applications.

High school teachers of American history, American government, and social studies, college seniors, and those college graduates who have received their baccalaureate degrees no more than three years prior to the commencement of fellowships may apply directly to the Foundation for fellowships. Direct applications are administered and evaluated on the same basis as applications from nominees.

Subpart C—Application Process

§ 2400.20 Preparation of applications.

Applications, on forms mailed directly by the Foundation to nominees and those who wish to make direct application, must be completed by all fellowship candidates in order that they be considered for an award.

§ 2400.21 Contents of applications.

Applications must include for—

(a) Senior fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about his or her background, interests, goals, and the school in which he or she teaches; and includes a statement about the applicant's educational plans and specifies how those plans will enhance his or her career as a secondary school teacher of American history, American government, or social studies;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students,

(ii) The applicant's career aspirations and his or her contribution to public service, and

(iii) Citizenship generally in a constitutional republic;

(3) The applicant's proposed course of graduate study, including the courses to be taken and the prospective subject or his or her master's thesis, where applicable, that leads to a master's degree; the specific degree sought; and evidence of his or her graduate school application;

(4) Three evaluations, one from an immediate supervisor, that attest to the applicant's strengths and abilities as a high school teacher; and

(5) A certified college transcript.

(b) Junior fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about the applicant's background, interests, goals, and the college which he or she attends or attended; and includes a statement about the applicant's educational plans and specifies how those plans will lead to a career as a secondary school teacher of American history, American government, or social studies;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students,

(ii) The applicant's career aspirations and his or her contribution to public service, and

(iii) Citizenship generally in a constitutional republic;

(3) Applicant's proposed course of graduate study, including the courses to be taken and the prospective subject of his or her master's thesis, where applicable, that leads to a master's degree; the specific degree sought; and evidence of his or her graduate school application;

(4) Three evaluations that attest to the applicant's academic achievements and to his or her potential to become an outstanding secondary school teacher; and

(5) A certified college transcript and certification of the applicant's class standing from those institutions that maintain or announce academic rankings.

§ 2400.22 Application deadline.

Applicants must submit complete applications postmarked by January 15th of each year preceding the start of the academic year for which they are applying. Applications not submitted by this date, with all required supporting documents, will not be considered.

Subpart D—Selection of Fellows

§ 2400.30 Selection criteria.

Applicants will be evaluated, on the basis of materials in their applications, as follows:

(a) Demonstrated commitment to teaching American history, American government, or social studies at the secondary school level;

(b) Demonstrated intention to pursue a program of graduate study that emphasizes the Constitution and to offer classroom instruction in that subject;

(c) Demonstrated record of willingness to devote themselves to civic responsibility;

(d) Outstanding performance or potential of performance as classroom teachers;

(e) Academic achievements and demonstrated capacity for graduate study; and

(f) Proposed courses of graduate study, especially the nature and extent of their subject matter components, and their relationship to the enhancement of applicants' teaching and professional activities.

§ 2400.31 Selection process.

(a) An independent review committee appointed by the Foundation will evaluate all valid applications and recommend to the Foundation the most outstanding applicants from each state for James Madison Fellowships.

(b) From among candidates recommended for fellowships by the review committee, the Foundation will name James Madison Fellows. The selection procedure will assure that at least one James Madison Fellow, junior or senior, is selected from each state in which there are at least two resident applicants who meet the selection criteria in § 2400.30.

(c) The Foundation may name, from among those recommended by the review committee, an alternate or alternates for each fellowship. An alternate will receive a fellowship if the person named as a James Madison Fellow declines the award or is not able to commence study at the start of the following academic year.

(d) Funds permitting, the Foundation may also select, from among those recommended by the review committee, fellows at large.

Subpart E—Graduate Study

§ 2400.40 Institutions of graduate study.

Fellowship recipients may attend any accredited institution of higher education in the United States with a master's degree program offering courses or training that emphasize the origins, principles, and development of the Constitution of the United States and its comparison with the constitutions and history of other forms of government.

§ 2400.41 Degree programs.

(a) Fellows may pursue a master's degree in history, political science, or government, the degree of Master of Arts in Teaching, or a related master's degree that permits a concentration in American history, American government, or social studies.

(b) A master's degree pursued under a James Madison Fellowship may entail either one or two years or their equivalent of study, according to the requirements of each institution at which a Fellow is enrolled.

§ 2400.42 Approval of programs.

The Foundation must approve each fellow's program of graduate study. To be approved, the program must

(a) On a part-time or full-time basis lead to a master's degree in history, political science, or government, the degree of Master of Arts in Teaching, or a related master's degree that permits a concentration in American history, American government, or social studies;

(b) Include courses, graduate seminars, or opportunities for independent study in topics directly related to the framing and history of the Constitution of the United States;

(c) Be pursued at an institution that assures a willingness to accept up to 6 semester hours of accredited transfer credits from another graduate institution for a fellow's successful completion of a summer institute that may be offered by the Foundation. For the Foundation's purposes, these 6 semester hours may be included in the required minimum of 12 semester hours or their equivalent of study of the United States Constitution; and

(d) Be pursued at an institution that encourages the fellow to enhance his or her capacities as a teacher of American history, American government, or social studies and to continue his or her career as a secondary school teacher.

§ 2400.43 Required courses of graduate study.

(a) To be acceptable to the Foundation, those courses related to the Constitution referred to in § 2400.42 must amount to at least 12 semester hours or their equivalent of study of topics directly related to the United States Constitution. More than 12 hours or their equivalent of such study is strongly encouraged.

(b) The courses that fulfil the required minimum of 12 semester hours or their equivalent of study of the United States Constitution must cover one or more of the following subject areas:

(1) The history of colonial America leading up to the framing of the Constitution;

(2) The Constitution itself, its framing, the history and principles upon which it is based, its ratification, the Federalist Papers, Anti-Federalist writings, and the Bill of Rights;

(3) The historical development of political theory, constitutional law, and civil liberties as related to the Constitution;

(4) Interpretations of the Constitution by the Supreme Court and other branches of the federal government;

(5) Debates about the Constitution in other forums and about the effects of constitutional norms and decisions upon American society and culture; and

(6) Any other subject clearly related to the framing, history, and principles of the Constitution.

(c) If a master's degree program in which a Fellow is enrolled offers the option of a master's thesis in place of a course or courses, the Fellow will be strongly urged to write a thesis. In all programs in which a master's degree thesis is required or elected as an option, a Fellow must write the thesis in a subject concerning the framing, principles, or history of the United States Constitution.

§ 2400.44 Special Consideration: Junior fellows' course of study.

Applicants for junior fellowships who seek or hold baccalaureate degrees in education are strongly encouraged to pursue master's degrees in history, political science, or government. Those applicants who hold undergraduate degrees in history, political science, government, or any other subjects may take some teaching methods and related courses. The Foundation will review each proposed course of study for an appropriate balance of subject matter and other courses based on the fellow's goals and background.

Subpart F—Fellowship Stipends

§ 2400.50 Amount of stipends.

Junior and senior fellowships carry a stipend of up to a maximum of $24,000 prorated over the period of fellow's graduate study.

§ 2400.51 Duration of stipends.

Stipends for junior fellowships may be payable over a period not to exceed two years of full-time graduate study, and those for senior fellowships may be payable over a period of not more than five years of part-time graduate study.

§ 2400.52 Use of stipends.

Stipends shall be used only to offset the costs of tuition, fees, books, and room and board associated with graduate study under a fellowship, although in no case shall the stipend for a fellowship exceed $12,000 annually. The costs allowed for a fellow's room and board will be the amount the fellow's institution reports to the Foundation as the average cost of room and board at the student's institution. Stipends for room, board, and books will be prorated for fellows enrolled in programs less than full time.

§ 2400.53 Certification for stipends.

In order to receive a fellowship stipend, a fellow must submit in writing acceptance of the terms of the fellowship, evidence of admission to an approved graduate program, and a certified statement of estimated expenses for tuition, fees, books, and room and board. Junior fellows must also provide evidence of receipt of their baccalaureate degrees.

§ 2400.54 Payment of stipends.

Payment for tuition, fees, books, and room and board will be remitted in care of the fellow at the beginning of each term of enrollment.

§ 2400.55 Termination of stipends.

The Foundation may suspend or terminate the payment of a stipend if a fellow fails to meet the criteria set forth in § 2400.42–2400.44 and § 2400.61, except as provided for in § 2400.62. Before it suspends or terminates a fellowship under these circumstances, the Foundation will give notice to the fellow, as well as the opportunity to be heard with respect to the grounds for suspension or termination.

§ 2400.56 Repayment of stipends.

(a) If a former fellow fails to teach American history, American government, or social studies on a full-time basis in a secondary school for at least one year for each school year for which assistance was provided under a fellowship, the former fellow shall repay all of the fellowship assistance received plus interest at the rate of 6% annum and, if applicable, reasonable collection fees, as prescribed in section 807 of the Act (20 U.S.C. 4506(b)).

(b) If a fellow resigns a fellowship, all fellowship funds which have not been spent or which the student may recover must be returned to the Foundation.

Subpart G—Special Conditions

§ 2400.60 Other awards.

Fellows may accept grants from other foundations, institutions, corporations, or government agencies to support their graduate study, including stipends to replace any income foregone for study. However, the stipend paid by the Foundation for allowable costs indicated in § 2400.52 will be reduced to the extent the costs are paid from other sources.

§ 2400.61 Renewal of awards.

(a) It is the intent of the Foundation to renew junior fellowship awards annually for a period not to exceed two years, and senior fellowships for a period not to exceed five years, or until a master's degree is received, whichever comes first.

(b) Fellowship renewal will be subject to an annual review by the Foundation and certification by an authorized official of the institution at which a fellow is registered that:

(1) The fellow is not engaged in gainful employment, other than full-time teaching in the case of senior fellows, that interferes with the fellow's studies; and

(2) The fellow is making satisfactory progress toward the degree and is in good academic standing according to the standards of each institution.

(c) As a condition of renewal of awards, each fellow must submit an annual report to the Foundation by July 1st. That report must indicate courses taken and grades achieved; courses planned for the coming year; changes in academic or professional plans or situations; any awards, recognitions, or special achievements in the fellow's academic study or school employment; and such other information as may related to the fellowship and its holder. Fellows must also submit a final report to the Foundation following completion of their fellowships.

§ 2400.62 Postponement of awards.

Upon application to the Foundation, a fellow may seek postponement of his or her fellowship because of ill health or other mitigating circumstances, such as military duty, temporary disability, necessary care of an immediate family member, or unemployment as a teacher. Substantiation of the reasons for postponement will be required.

§ 2400.63 Evidence of master's degree.

At the conclusion of the fellowship term, each fellow must provide evidence that he or she has secured an approved master's degree as set forth in the fellow's original plan of study.

Dated: February 25, 1992.

Paul A. Yost, Jr.,

President, James Madison Memorial Fellowship Foundation.

[FR Doc. 92–4701 Filed 2–28–92; 8:45 am]

BILLING CODE 6820–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 10

Licensing of Maritime Personnel

CFR Correction

In title 46 of the Code of Federal Regulations, parts 1 to 40, revised as of October 1, 1991, on page 128, in the second column § 10.504 was inadvertently omitted and should precede § 10.505. Section 10.504 should read as follows:

§ 10.504 Application of deck service for limited engineer licenses.

Service gained in the deck department on vessels of appropriate tonnage may substitute for up to 25 percent or 6 months, whichever is less, of the service requirement for a license as chief engineer (limited), assistant engineer (limited), or designated duty engineer.

BILLING CODE 1505-01-D

Proposed Rules

Federal Register
Vol. 57, No. 41
Monday, March 2, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of General Counsel

10 CFR Chapters I, II, III and X

[Docket No. GC-NOI-92-101]

Existing Regulations and Programs; Regulatory Review

AGENCY: Department of Energy.

ACTION: Notice of inquiry and public hearing.

SUMMARY: The Department of Energy (DOE) has issued this notice of inquiry (NOI) in order to request public comment on existing regulations and programs that DOE has identified as meriting consideration for revision or elimination in compliance with the President's January 28, 1992, Memorandum for Certain Department and Agency Heads on the subject of "Reducing the Burden of Government Regulations." The President's Memorandum requires review of existing regulations and programs against certain specific standards with the objectives of identifying and removing unnecessary burdens on the private sector and of fostering economic growth. DOE invites members of the public to comment on both the regulations and programs of DOE specifically identified below and any other regulations and programs which they think should be considered for revision or elimination consistent with the President's Memorandum. To be of maximum use, comments recommending revision of an existing regulation or program should contain specific suggestions for substitute provisions or methods. A purpose of this NOI is to comply with the direction in the President's Memorandum to obtain public input to the review process. This NOI does not begin any rulemaking. Any revisions or changes to existing regulations and programs which may hereafter be undertaken will be implemented through appropriate administrative actions which may include issuance of notices of proposed rulemaking.

DATES: Written comments (10 copies) will be considered if received at the address provided below no later than March 25, 1992. A public hearing is scheduled to be held in Washington, DC, on March 23, 1992. Requests to speak at the hearing must be received no later than March 20, 1992.

ADDRESSES: Any written comment (10 copies) and the envelope in which it is enclosed should be marked "Notice of Inquiry and Regulatory Review, Docket No. GC-NOI-92-101" and must identify the program division to which the comment is directed. Both the written comment and any request to speak at the public hearing, must be submitted to: U.S. Department of Energy, Office of General Counsel, GC-41, Notice of Inquiry and Public Hearing, Docket No. GC-NOI-92-101, 1000 Independence Avenue, SW., room 6B-256, Washington, DC 20585 (202) 586-9507. FAX comments will not be accepted. The public hearing will begin at 9:30 a.m. in the DOE Auditorium at the U.S. Department of Energy, 1000 Independence Avenue, SW., room GE-086, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Neal J. Strauss, Office of General Counsel, GC-41, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, the President issued a Memorandum for Certain Department and Agency Heads (Memorandum) which set aside the following 90 days for, among other things, a review of existing regulations and programs with the objectives of reducing the burden of regulation and promoting economic growth to the extent that the law allows. The Memorandum directs that each regulation and program be reviewed, with opportunity for public input, for compliance with the following standards:

(a) The expected benefits to society of any regulation should clearly outweigh the expected costs it imposes on society.

(b) Regulations should be fashioned to maximize net benefits to society.

(c) To the maximum extent possible, regulatory agencies should set performance standards instead of prescriptive command-and-control requirements, thereby allowing the regulated community to achieve regulatory goals at the lowest possible cost.

(d) Regulations should incorporate market mechanisms to the maximum extent possible.

(e) Regulations should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation.

The Memorandum further directs that, to the maximum extent permitted by law, and as soon as possible, the agency should propose repeal or modifications in existing regulations to bring them into conformity with the foregoing standards.

Discussion

DOE has identified the following existing regulations in 10 CFR chapter II by program division as possible candidates for elimination or revision in light of these standards:

Conservation and Renewable Energy

Eliminate

10 CFR part 417—Wind Energy Technology Application Program
10 CFR part 456—Energy Conservation Service Program
10 CFR part 490—Emergency Building Temperature Restrictions

Revise

10 CFR 435.101—Building Energy Performance Standards (prescriptive minimum requirements)

Defense Programs

Revise

10 CFR part 810—Assistance to Foreign Atomic Energy Activities

General Counsel

Revise

10 CFR part 781—DOE patent licensing regulations

Economic Regulatory Administration

Eliminate

10 CFR 1001.1 (Requiring ERA to separate natural gas regulatory functions from petroleum price and allocation enforcement functions.)
10 CFR 205.191 (Procedures for discretionary notices of probable violation.)
10 CFR 205.199D (Procedures for interim remedial orders)

10 CFR 205.199E (Notices of proposed disallowance, proposed orders of disallowance and orders of disallowance.)
10 CFR part 205, subpart G (Other proceedings, e.g., petitions for multiple allocation fractions.)

Fossil Energy

Eliminate

10 CFR part 207—Collection of information
10 CFR part 220—Strategic petroleum reserve crude oil allocation
10 CFR part 300—Coal loan guarantee program
10 CFR part 303—Administrative procedures and sanctions
10 CFR part 305—Coal utilization
10 CFR part 320—University coal research laboratories program
10 CFR part 595—Certification of use of natural gas to displace fuel oil

DOE invites the public to comment on the possible candidates for elimination or revision which are identified above. DOE encourages the public to make specific suggestions for substitute provisions where revision is recommended. Comments which make such specific recommendations will enable DOE to more fully consider the merits of the ideas and language for the recommendations in question.

DOE also invites members of the public to identify other DOE regulations (see 10 CFR chapter II) or programs they believe to be inconsistent with the standards set forth above. DOE has not listed any provisions regarding internal management of DOE facilities and personnel which may indirectly affect the public.

Opportunity for Public Comment

Written Comments

Interested persons are invited to respond to this notice by submitting data, views, or arguments. Comments should be submitted to the Office of General Counsel at the address set forth above. The written comments submitted should be identified with the designation, "Notice of Inquiry for Regulatory Review" and the name of the program division to which it should be directed, e.g., Conservation and Renewable Energy. Ten (10) copies of the comments should be submitted.

All comments received on or before the date specified in the beginning of this NOI will be considered DOE. Comments received after that date will be considered to the extent that time allows.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy marked confidential, as well as ten (10) copies from which the confidential information has been deleted. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination under 10 CFR Part 1004.

Hearing Procedures

One public hearing will be held pursuant to this notice at the time, date and place indicated above in the Dates and Addresses sections of this NOI. Any person who has an interest in making an oral presentation should make a written request to speak. Such a request should be sent to the Office of General Counsel at the address given in the Addresses section of this NOI and must be received by 4:30 p.m., eastern standard time, on the date specified in the Dates section. The person making the request should provide a daytime phone number where the person may be reached. Those persons requesting an opportunity to make an oral presentation should bring ten (10) copies of their statement to the hearing.

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to five (5) minutes. A DOE official will preside at the hearing which will be legislative in nature. The hearing will not be conducted like an evidentiary, trial-type proceeding. Although there will be no cross examination, the presiding official may ask questions.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

Issued in Washington, DC, on February 25, 1992.

John J. Easton, Jr.,

General Counsel.

[FR Doc. 92-4798 Filed 2-28-92; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-89-AD]

Airworthiness Directives; Piper Models PA-46-310P and PA-46-350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Piper Models PA-46-310P (Malibu) and PA-46-350P (Mirage) airplanes. The proposed action would require inspection of the elevator trim cable guide tube to determine if it has been severed, and, if severed, installation of an elevator trim cable guide sleeve. Investigation of the trim system on one of the affected airplanes revealed a lockup of the trim tab system because the elevator trim cable guide tube was severed and the mismatched halves had jammed the trim cable turnbuckles. The actions specified by the proposed AD are intended to prevent sudden pitch changes related to a jammed trim tab, which could result in loss of control of the airplane.

DATES: Comments must be received on or before May 4, 1992.

ADDRESSES: Service information that is related to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-89-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Miller, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3020; Facsimile (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–89–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–89–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Recently, the pilot of a Piper Model PA–46–310P airplane reported a lockup of the elevator trim tab. Investigation of the trim tab system revealed that the elevator trim cable guide tube was severed and the mismatched halves of the tube had jammed the trim cable turnbuckles. The tube had been severed in order to gain access to the trim cable turnbuckles while rigging the elevator trim cables after field maintenance of the trim tab system. Access to the turnbuckle was not defined in the original maintenance and production procedures. The manufacturer (Piper) has since revised these procedures, which specify instructions for gaining access.

In addition, Piper has issued Service Bulletin No. 953, dated October 29, 1991, which references Elevator Trim Cable Tube Splice Kit, Part Number 766–272. This kit consists of an external sleeve that needs to be installed on severed elevator trim cable guide tubes and instructions for this installation on Piper Models PA–46–310P (Malibu) and PA–46–350P (Mirage) airplanes. After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to continue to assure the airworthiness of the affected airplanes.

Since the condition described is likely to exist or develop in other Piper Model PA–46–310P and PA–46–350P airplanes of the same type design, an airworthiness directive is being proposed that specifies actions that would prevent sudden pitch change related to a jammed trim tab, which could result in loss of control of the airplane. The proposed action would require an inspection to determine if the elevator trim cable guide tube has been severed, and, if severed, installation of an external sleeve in accordance with the instructions in Elevator Trim Cable Guide Tube Splice Kit, Piper Part Number 766–272. This kit is referenced in Piper Service Bulletin No. 953, dated October 29, 1991.

It is estimated that 403 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1.5 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $25 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $43,322.50.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket No. 91–CE–89–AD.

Applicability: The following model airplanes, certificated in any category:

Models	Serial No.
PA–46–310P	46–8408001 through 46–8608067 and 4608001 through 4608140.
PA–46–350P	4622001 through 4622117.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent sudden pitch change related to a jammed trim tab, which could result in loss of control of the airplane, accomplish the following:

(a) Visually inspect the elevator trim cable guide tube for severance. Severance is defined as any cut, break, or division of the elevator trim cable guide tube (generally performed to gain access to the trim cable turnbuckles).

(b) If severance is found, prior to further flight, splice the elevator trim cable guide tube and install an external sleeve in accordance with the instructions in Elevator Trim Cable Guide Tube Splice Kit, Piper Part Number 766–272.

Note: Revised maintenance procedures on gaining access to the trim cable turnbuckles may be obtained from the manufacturer at the address specified in paragraph (e) of this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 21, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-4743 Filed 2-28-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-101-AD]

Airworthiness Directives; Piper Aircraft Corporation Models PA-46-310P and PA-46-350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Piper Aircraft Corporation (Piper) Models PA-46-310P (Malibu) and PA-46-350P (Mirage) airplanes. The proposed action would require the replacement of certain empennage countersunk rivets with universal head rivets of a larger diameter. General maintenance inspections of the empennage of the affected airplanes revealed loose rivets working into the skin. Undetected loose rivets could eventually lead to a weakened airplane structure. The actions specified by this AD are intended to prevent structural deterioration because of loose empennage rivets.

DATES: Comments must be received on or before May 4, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Dockets No. 91-CE-101-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-CE-101-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-101-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64016.

Discussion

General maintenance inspections of the empennage of several Piper Aircraft Corporation (Piper) Models PA-46-310P (Malibu) and PA-46-350P (Mirage) airplanes revealed loose empennage rivets. Three of these airplanes had rivets that were working into the skin on the empennage, which if not detected could eventually lead to a weakened airplane structure. Hours time-in-service (TIS) of the subject airplanes varied from 107 hours TIS to 1,477 hours TIS.

The manufacturer (Piper) has issued Service Bulletin (SB) No. 944, dated October 5, 1990, which specifies instructions for the replacement of specific empennage countersunk rivets with universal head rivets of a larger diameter on Piper Models PA-46-310P and PA-46-350P airplanes. After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent structural deterioration because of loose empennage rivets.

Since the condition described is likely to exist or develop in other Piper Models PA-46-310P and PA-46-350P airplanes of the same type design, the proposed AD would require the replacement of certain empennage countersunk rivets with universal head rivets of a larger diameter. The proposed actions would be done in accordance with the INSTRUCTIONS in Piper SB No. 944, dated October 5, 1990.

The FAA estimates that 512 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $5 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $115,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket No. 91–CE–101–AD.

Applicability: Model PA–46–310P airplanes (serial numbers (S/N) 46–8408001 through 46–8608067 and S/N 4608001 through 4608140) and Model PA–46–350P airplanes (S/N 4622001 through 4622109), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent structural deterioration because of loose empennage rivets, accomplish the following:

(a) Replace the empennage countersunk rivets indicated in Piper Service Bulletin (SB) No. 944, dated October 5, 1990, with universal head rivets of a larger diameter in accordance with the INSTRUCTIONS in Piper Service Bulletin No. 944.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 21, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–4744 Filed 2–28–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–CE–98–AD]

Airworthiness Directives; Piper Aircraft Corporation Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Piper Aircraft Corporation (Piper) Models PA–46–310P (Malibu) and PA–46–350P (Mirage) airplanes. The proposed action would require disconnecting the low vacuum annunciation switch, fabricating and installing a placard that labels the low vacuum light as inoperative, installing vacuum gauge markings, and incorporating changes to the limitations section of the Airplane Flight Manual. One of the affected airplanes experienced an in-flight vacuum system failure, which went undetected because the low vacuum detector failed to sense a low vacuum. Low vacuum can result in degraded operation of the air-driven attitude gyros and their associated autopilot and flight direction functions, and can reduce the efficiency of the pneumatic de-icing equipment. The actions specified by the proposed AD are intended to prevent failure of the air-driven attitude gyro and autopilot systems caused by an undetected low vacuum.

DATES: Comments must be received on or before May 4, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–98–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Miller, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3020; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–98–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–98–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a report of an in-flight vacuum system failure on a Piper Model PA–46–310P airplane. The low vacuum detector did not sense a low vacuum. A vacuum gauge is the primary display of the vacuum system condition and the "Vacuum Low" annunciator light located on the instrument panel is a supplemental warning of excessively low vacuum. Low vacuum may result in degraded operation of the air-driven gyros and their associated autopilot and flight direction functions, and the pneumatic de-icing equipment. A degraded attitude gyro/autopilot function can result in a hazard to the airplane. Although the pilot observed a vacuum gauge reading in this instance, he did not acknowledge a vacuum system failure because the

low vacuum annunciator light did not function and a minimum vacuum level marking was not provided on the gauge. The autopilot reacted to excessive attitude gyro precessions and provided unwanted pitch commands to the airplane, resulting in oscillations until the pilot disconnected the autopilot. If these oscillation would become excessive, then severe structural damage could occur.

It is possible for the vacuum to fall below normal and go undetected if the pilot is not monitoring the vacuum gauge and the "Vacuum Low" light fails to annunciate. As a result, the manufacturer (Piper Aircraft Corporation) has issued Piper Service Bulletin (SB) No. 947A, dated October 29, 1991, which specifies procedures for disconnecting the low vacuum annunciation switch, fabricating and installing a placard that labels the low vacuum light as inoperative, and installing vacuum gauge markings.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the air-driven attitude gyro and autopilot systems caused by an undetected low vacuum.

Since the condition described is likely to exist or develop in other Piper Models PA-46-310P and PA-46-350P airplanes of the same type design, the proposed AD would require disconnecting the low vacuum annunciation switch, fabricating and installing a placard that labels the low vacuum light as inoperative, installing vacuum gauge markings, and incorporating changes to the Airplane Flight Manual. The proposed disconnection, fabrication and installations would be accomplished in accordance with Piper SB No. 947A, dated October 29, 1991.

The FAA is particularly interested in comments from the public concerning the provisions of Piper SB No. 947A that relate to disconnecting the low vacuum warning annunciator light.

The FAA estimates that 403 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $44,330.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket No. 91-CE-98-AD.

Applicability: Model PA-46-310P airplanes (serial numbers (S/N) 46-8406001 through 46-8608067 and S/N 4608001 through 4608140) and Model PA-46-350P airplanes (S/N 4622001 through 4622118), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the air-driven attitude gyro and autopilot systems caused by an undetected low vacuum, accomplish the following:

(a) Disconnect the low vacuum annunciation switch in accordance with paragraphs 1 through 4 of the INSTRUCTIONS in Part I of Piper Service Bulletin No. 947A, dated October 29, 1991.

(b) Fabricate a placard with the following words: VACUUM LOW LIGHT INOP, and install this placard to the instrument panel in clear view of the pilot in accordance with paragraphs 5 and 6 of the INSTRUCTIONS in Part I of Piper Service Bulletin No. 947A, dated October 29, 1991.

(c) Install vacuum gauge markings in accordance with the INSTRUCTIONS in Part II of Piper Service Bulletin No. 947A, dated October 29, 1991.

(d) Incorporate whichever of the following reports that is applicable into the limitations section of the Airplane Flight Manual, and operate the airplane accordingly:

Model	Report
PA-46-310P	VB-1200, page 2-4, Issued: January 11, 1984, Revised: October 14, 1991
PA-46-310P	VB-1300, page 2-4, Issued: July 1, 1986, Revised: October 14, 1991
PA-46-350P	VB-1332, page 2-4, Issued: June 15, 1988, Revised: October 14, 1991

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 21, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-4745 Filed 2-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 92-CE-07-AD]

Airworthiness Directives; Bendix/King KAP 150/KFC 150 Flight Control Systems Installed on Piper Models PA-46-310P and PA-46-350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Bendix/King KAP 150/KFC 150 Flight Control Systems installed on Piper Models PA-46-310P (Mirage) and PA-46-350P (Malibu) airplanes. The proposed action would require the installation of a pitch servo cover kit. The Federal Aviation Administration (FAA) has received two reports where corrosion was found on the electronic circuit board of the affected flight control systems. The actions specified by the proposed AD are intended to prevent moisture from entering the electronic circuit board through the pitch servo, which could possibly lead to undesired movement of the elevator.

DATES: Comments must be received on or before May 4, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from Bendix/King, Product Support Department, 400 N. Rogers Road, Olathe, Kansas 66062-0212. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-07-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Vassalli, Aerospace Engineer, Systems and Equipment Branch, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4132; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-07-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-07-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received two reports where corrosion was found on the electronic circuit board of Bendix/King KAP 150/KFC 150 Flight Control Systems installed on Piper Models PA-46-310P (Mirage) and PA-46-350P (Malibu) airplanes. This condition, if not detected and corrected, could possibly lead to an undesired movement of the elevator and loss of control of the airplane.

The manufacturer, Bendix/King, has issued Installation Bulletin (IB) No. 312, dated March 19, 1990, which specifies procedures for the installation of pitch and yaw servo cover kits, part number (P/N) 050-03007-0000 and P/N 050-03006-0000, respectively. After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent moisture from entering the electronic circuit board through the pitch servo, which could possibly lead to undesired movement of the elevator.

Since the condition described is likely to exist or develop in other Bendix/King KAP 150/KFC 150 Flight Control Systems installed on Piper Models PA-46-310P (Mirage) and PA-46-350P (Malibu) airplanes of the same type design, the proposed AD would require the installation of a pitch servo cover kit, P/N 050-3007-0000. The proposed action would be accomplished in accordance with the instructions in Bendix/King IB No. 312, dated March 19, 1990. The FAA has determined that AD action should not be taken for the yaw servo cover installation specified in the referenced service information because failure of the yaw servo would not result in an unsafe condition.

The compliance time for this proposed AD is presented in calendar time instead of hours time-in-service. The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service. In addition, the utilization rate of the affected airplanes varies throughout the fleet. For example, one operator may utilize the airplane 50 hours TIS in one week, while another operator may not operate the airplane 50 hours TIS in one month. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours time-in-service is proposed.

The FAA estimates that 233 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $260 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $99,025. Bendix/King reports that it has sold 297 kits. Based on this information, the FAA estimates that as many as 50 percent of the affected airplanes have been modified, which greatly reduces the cost impact of this action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules

Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bendix/King: Docket No. 92–CE–07–AD.

Applicability: KAP 150/KFC 150 Flight Control Systems installed on Piper Models PA–46–310P and PA–46–350P airplanes, certificated in any category.

Compliance: Required within the next 90 calendar days after the effective date of this AD, unless already accomplished.

To prevent moisture from entering the electronic circuit board through the pitch servo, which could possibly lead to undesired movement of the elevator, accomplish the following:

(a) Install a pitch servo cover kit, part number 050–03007–0000, in accordance with the instructions in Bendix/King Installation Bulletin No. 312, dated March 19, 1990.

Note: Installation of the yaw servo cover kit, part number 050–03006–0000, that is referenced in Bendix/King Installation Bulletin No. 312 is not required by this AD action.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Bendix/King, Product Support Department, 400 N. Rogers Road, Olathe, Kansas 66062–0212; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 21, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–4746 Filed 2–28–92; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 91–NM–143–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would have required inspection of the hydraulic pressure tube to the power drive unit for the inboard leading edge slats and the adjacent pneumatic duct, and replacement, if the clearance was less than allowable limits or chafing was evident. That proposal was prompted by reports of leaks in the hydraulic pressure tube, caused by chafing between the hydraulic tube and pneumatic duct. This action revises the proposed rule by adding a requirement that the hydraulic return tube be replaced, if a new hydraulic pressure tube is installed. The actions specified by this proposed AD are intended to prevent temporary impairment of the crew's vision, caused by hydraulic fluid in the environmental control system.

DATES: Comments must be received by April 3, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–143–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2673; fax (206) 227–1181. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–143–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–143–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 14, 1991 (56 FR 40279). That NPRM would have required inspection of the hydraulic pressure tube to the power drive unit for

the inboard leading edge slats and the adjacent pneumatic duct, and replacement, if the clearance was less than allowable limits or chafing was evident, in accordance with the specified service bulletin. That NPRM was prompted by two reports of leaks in the hydraulic pressure tube caused by chafing between the hydraulic tube and pneumatic duct. That condition, if not corrected, could result in temporary impairment of the crew's vision caused by hydraulic fluid in the environmental control system.

Since the issuance of the proposal, the FAA has reviewed and approved Revision 1 of Boeing Alert Service Bulletin 767-29A0064, dated October 24, 1991. This revised service bulletin adds procedures for replacing the hydraulic return tube with a new design tube, if the hydraulic pressure tube is replaced. If the hydraulic pressure tube is replaced, but the hydraulic return tube is not replaced, the tubes will touch and begin to chafe. The FAA has determined that, in order to adequately address the unsafe condition identified as chafing of the hydraulic pressure tube against the pneumatic duct, the proposed rule must be revised to add a requirement to replace the hydraulic return tube with a new design tube, if the hydraulic pressure tube is, or previously has been, replaced due to chafing of the hydraulic pressure tube against the pneumatic duct. Additionally, the proposed rule must be revised to cite Revision 1 of the service bulletin as the appropriate source for service information.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

There are approximately 342 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 129 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $28,380.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 91-NM-143-AD.

Applicability: Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767-29A0064, Revision 1, dated October 24, 1991, certificated in any category.

Compliance: Required within the next 3,000 flight hours after the effective date of this AD, unless accomplished previously.

To prevent hydraulic fluid from entering the cabin, accomplish the following:

(a) Inspect the inboard leading edge slat power drive unit hydraulic pressure tube for clearance from the adjacent pneumatic duct and for signs of chafing, in accordance with Boeing Alert Service Bulletin, Revision 1, dated October 24, 1991:

(1) If the clearance is more than 0.25 inch and there are no signs of chafing, no further action is necessary.

(2) If the clearance is 0.25 inch or less, or if signs of chafing are found on the hydraulic tube, prior to further flight, replace both the hydraulic pressure tube and the hydraulic return tube, in accordance with the service bulletin.

(3) If chafing is found on the pneumatic duct, prior to further flight, repair the pneumatic duct in accordance with the service bulletin.

(b) For airplanes on which the hydraulic pressure tube has been replaced in accordance with Boeing Service Bulletin 767-29A0064 (original issue), dated June 13, 1991: Within 4,000 flight hours after the effective date of this AD, replace the hydraulic return tube in accordance with Paragraph III.D. of Boeing Service Bulletin 767-29A0064, Revision 1, dated October 24, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 18, 1992.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-4733 Filed 2-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-258-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require inspection of the flexible conduit, wiring, and support brackets between the fuselage and the forward and aft cargo door, and replacement or repair, if necessary. This proposal is prompted by a report of an uncommanded electrical opening of an aft cargo door that occurred during maintenance procedures conducted on a Model 747-200 series airplane. The actions specified by the proposed AD are intended to prevent the inadvertent actuation of the respective cargo door power drive units that open and close the doors, and possible injury to maintenance or cargo handling personnel.

DATES: Comments must be received by April 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-258-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Huber, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM-130S, FAA, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2791; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-258-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-258-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

One operator of a Boeing Model 747-200 series airplane reported an uncommanded electrical opening of the aft cargo door that occurred during maintenance procedures. As the airplane was being prepared for flight, investigation of the circuit breaker panel revealed that the aft cargo door circuit breaker had tripped. The aft cargo door was cranked open manually, the circuit breaker was reset, and no faults occurred. The cargo door was then closed electrically and cycled twice without incident.

Subsequent to this incident, the aft cargo door control and indication wire bundle was disconnected at the junction box, located on the upper portion of the interior of the door, and the individual wires were checked for continuity. During the continuity checks, electrical fluctuations were experienced as the wire bundle was manipulated. When the wire bundle was reconnected to the junction box, the door began to open with no activation of the electrical door-open switches. Door operation ceased only when the aft cargo door circuit breaker was pulled. Examination of the portion of the wire bundle contained in a flexible copper conduit spanning the door hinge area revealed several wires with insulation breaches and damage. The insulation breaches were caused by wires rubbing against portions of the flexible conduit innercore that had separated and left jagged edges. The damaged wires were electrically isolated and door operation returned to normal. The master latch lock switch, which removes power from the door when the door is locked, was checked and found to be functioning properly.

The uncommanded operation of the aft cargo door that occurred in the incident described above was determined to be a result of electrical shorting of the aft cargo door control wires contained within the flexible conduit. This condition, if not corrected, could result in the inadvertent actuation of the cargo door power drive units that open and close the doors, and possible injury to cargo handling or maintenance personnel. This condition could not cause the door to open during flight, however.

There have been no reported incidents of the forward cargo door opening inadvertently due to electrical shorting of wires housed within the flexible conduit. However, since the forward cargo door uses a similar flexible conduit as is installed in the aft cargo door, the potential problem also may exist with regard to the forward cargo door.

The FAA has reviewed and approved Boeing Service Bulletin 747-52-2224, Revision 1, dated March 7, 1991 (for Model 747-100, -200, and -300 series airplanes); and Boeing Service Bulletin 747-52-2225, Revision 1, dated March 7, 1991 (for Model 747-400 series airplanes), as amended by Boeing Service Letter M-7240-91-3164, dated October 2, 1991. These service bulletins describe procedures for modification of the door warning systems on the forward and aft lower lobe and main deck side cargo doors; and include procedures for a post-modification functional test of the systems.

The FAA has also reviewed and approved the following Boeing Installation Drawings that describe the proper installation of the wire bundle and the corresponding flexible conduit within the cargo door warning systems:

a. Drawing 288U4210, Revision C, dated November 29, 1990;
b. Drawing 65B70620, Revision B, dated January 16, 1989;
c. Drawing 288U4630, Revision E, dated November 9, 1990; and
d. Drawing 65B70621, Revision E, dated September 24, 1990.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection of the electrical conduit, wiring, and support brackets between the fuselage and the forward and aft cargo door, and replacement or repair, if necessary. Functional testing of the cargo door would also be required. The actions would be required to be accomplished in accordance with the service bulletins and drawings described previously.

There are approximately 859 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 206 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. If the aft and forward cargo door flexible conduits require replacement, additional parts would cost approximately $123 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $70,658.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 91–NM–258–AD.

Applicability: Model 747 airplanes; equipped with a fuselage-to-cargo door flexible metallic electrical conduit that was installed either in production or in accordance with Boeing Service Bulletin 747–52–2170, dated October 7, 1983; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent actuation of the cargo power drive units that open and close the doors, and possible injury to maintenance or cargo handling personnel, accomplish the following:

(a) For the aft cargo door: Within 120 days after the effective date of this AD, accomplish the following:

(1) Inspect the installation of wire bundle W574 and the corresponding flexible conduit to verify their correct installation in accordance with Boeing Installation Drawing 288U4630, Revision E, dated November 9, 1990; and Boeing Installation Drawing 65B70621, Revision E, dated September 24, 1990. On the flexible conduit, mark the position of the clamp placement (for later reinstallation purposes). If the installation is not installed in accordance with the applicable drawing, prior to further flight, replace the flexible conduit with a new flexible conduit of the same part number.

(2) Using the following inspection method, inspect the flexible conduit for the presence of cracking in the convoluted inner core; and inspect the wire bundle in the area normally covered by the conduit for the presence of damaged insulation.

(i) Disconnect and remove connectors DM711A and DM711B from wire bundle W574 and cap them for protection.

(ii) Remove the clamps supporting flexible conduit 162–748–10. (Retain the mounting hardware for re-installation.)

(iii) From the seal passage to connection M711, remove the clamps supporting wire bundle W574 and rigid conduit 69B70139. Remove the wire bundle ties between the lower end of flexible conduit 162–748–10 and connectors DM711A and DM711B. (Retain the mounting hardware for reinstallation.)

(iv) Gently slide the flexible and rigid conduits off the wire bundle.

(v) Visually inspect the complete wire bundle, and the internal and external surfaces of the flexible conduit for damage.

(vi) If damage is found in the wire bundle, prior to further flight, repair or replace it in accordance with normal maintenance procedures. If damage is found in the flexible conduit, prior to further flight, replace the conduit with a new conduit of the same part number. (Conduit damage is not repairable.)

(vii) Install flexible conduit 162–748–10 on wire bundle W574.

Note: The conduit end without drain holes goes on the wire bundle first.

The drain holes should be on the connector end.

(viii) Install rigid conduit 69B70139.

(ix) Install connectors for DM711A and DM711B.

(x) Reposition flexible conduit 162–748–10 in accordance with Boeing Installation Drawing 65B70621, Revision E, dated September 24, 1990. When reinstalling the flexible conduit, place the clamps in the same positions as marked in accordance with subparagraph (a)(1) of this AD.

(xi) Connect connectors DM711A and DM711B to connection M711.

(3) Following the completion of the inspection required by paragraphs (a)(1) and (a)(2) of this AD, perform a functional test of the cargo door, in accordance with Boeing Service Bulletin 747–52–2224, Revision 1, dated March 7, 1991 (for Model 747–100, –200, and –300 series airplanes); or Boeing Service Bulletin 747–52–2225, Revision 1, dated March 7, 1991 (for Model 747–400 series airplanes), as amended by Boeing Service Letter M–7240–91–3164, dated October 2, 1991; as applicable.

(4) Visually inspect the conduit support bracket and attached standoff pin on the upper arm of the forward lift actuator mechanism for damage. If damage is detected, prior to further flight, install a new bracket in accordance with Boeing Installation Drawing 65B70621, Revision E, dated September 24, 1990.

(b) For the forward cargo door: Within 270 days after the effective date of this AD, accomplish the following:

(1) inspect the installation of wire bundle W572 and the corresponding flexible conduit to verify their correct installation in accordance with Boeing Installation Drawing 288U4210, Revision C, dated November 29, 1990; and Boeing Installation Drawing 65B70620, Revision B, dated January 16, 1989. On the flexible conduit, mark the position of the clamp placement (for later reinstallation purposes). If the installation is not installed in accordance with the applicable drawing, prior to further flight, replace the flexible conduit with a new flexible conduit of the same part number.

(2) Using the following inspection method, inspect the flexible conduit for the presence of cracking in the convoluted inner core; and inspect the wire bundle in the area normally covered by the conduit for the presence of damaged insulation.

(i) Disconnect and remove connectors DM0709A and DM0709B from wire bundle W572 and cap them for protection.

(ii) Remove the clamps supporting flexible conduit 162–749–10. (Retain the mounting hardware for re-installation.)

(iii) From the seal passage to connection M0709, remove the clamps supporting wire bundle W572 and rigid conduit 69B70137. Remove the wire bundle ties between the lower end of flexible conduit 162–749–10 and connectors DM0709A and DM0709B. (Retain the mounting hardware for reinstallation.)

(iv) Gently slide flexible and rigid conduits off the wire bundle.

(v) Visually inspect the complete wire bundle, and the internal and external surfaces of the flexible conduit for damage.

(vi) If damage is found in the wire bundle, prior to further flight, repair or replace it in accordance with normal maintenance procedures. If damage is found in the flexible conduit, prior to further flight, replace the conduit with a new conduit of the same part number. (Conduit damage is not repairable.)

(vii) Install flexible conduit 162–749–10 on wire bundle W572.

Note: The conduit end without drain holes goes on the wire bundle first.

The drain holes should be on the connector end.

(viii) Install rigid conduit 69B70137.

(ix) Install connectors for DM0709A and DM0709B.

(x) Reposition flexible conduit 162–749–10 in accordance with Boeing Installation Drawing 65B70620, Revision B, dated January 16, 1989. When reinstalling the flexible conduit, place the clamps in the same positions as marked in accordance with paragraph (b)(1) of this AD.

(xi) Connect connectors DM0709A and DM0709B to connection M0709.

(3) Following the completion of the inspection required by paragraphs (b)(1) and (b)(2) of this AD perform a functional test of the cargo door, in accordance with Boeing Service Bulletin 747–52–2224, Revision 1,

dated March 7, 1991 (for Model 747–100, –200, and –300 series airplanes); or Boeing Service Bulletin 747–52–2225, Revision 1, dated March 7, 1991 (for Model 747–400 series airplanes), as amended by Boeing Service Letter M–7240–91–3164, dated October 2, 1991; as applicable.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 18, 1992.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–4734 Filed 2–28–92; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 91–NM–270–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require inspection of the main landing gear forward trunnion support fitting fuse pins and replacement of any incorrect fuse pins found. This proposal is prompted by reports indicating that incorrect fuse pins were installed on one airplane during a landing gear change and others were installed during production. The actions specified by the proposed AD are intended to prevent structural damage to the wing rear spar and fuel leakage in the event of a main landing gear breakaway, or the failure to withstand ultimate landing loads on high gross weight models.

DATES: Comments must be received by April 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–270–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2781; fax (206) 227–1181. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following is made: "Comments to Docket Number 91–NM–270–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–270–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

One operator of Boeing Model 767 airplanes reported finding incorrect main landing gear (MLG) forward trunnion support fitting fuse pins on one airplane during a land gear change. The pins were installed during a previous landing gear replacement in accordance with the Boeing Model 767 Illustrated Parts Catalogue (IPC). Review of the IPC revealed a discrepancy in the applicability legend of the MLG trunnion support fitting fuse pins. The IPC listed fuse pins having part numbers 112T1078–1 and 112T1078–2 as being applicable for installation on any Model 767 airplane; however, these pins should be installed only on airplanes having 388,000 pounds and 409,000 pounds maximum taxi gross weight, respectively. The FAA also received a report that incorrect fuse pins were installed on airplanes in production. The outside diameter of all fuse pins is the same but the inside diameter determines the fuse pin strength and varies with usage. The FAA has determined that the use of over-strength fuse pins could result in structural damage to the wing rear spar and fuel leakage in the event of a MLG breakaway. High gross weight airplanes may not be able to withstand ultimate landing loads with under-strength fuse pins installed.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–57A0038, Revision 1, dated November 21, 1991, which describes procedures for the inspection of the fuse pins, and replacement of the incorrect fuse pins.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of the MLG forward trunnion support fitting fuse pins, and replacement of the incorrect fuse pins found. These actions would be required to be accomplished in accordance with the service bulletin described previously. Additionally, operators are required to submit to the FAA a report of any discrepancies found as a result of the inspection.

There are approximately 398 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 135 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $155,925.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-270-AD.

Applicability: Model 767 series airplanes, listed in Boeing Alert Service Bulletin 767-57A0038, Revision 1, dated November 21, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent damage to the wing rear spar and prevent fuel leakage in the event of main landing gear (MLG) breakaway, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, inspect the MLG forward trunnion support fitting fuse pins to determine if the correct part-numbered pins are installed, in accordance with Boeing Alert Service Bulletin 767-57A0038, Revision 1, dated November 21, 1991.

(1) If incorrect fuse pins are installed, prior to further flight, replace the fuse pins in accordance with Boeing Alert Service Bulletin 767-57A0038, Revision 1, dated November 21, 1991.

(2) If correct fuse pins are found, no further action is required.

(b) Within 10 days after completion of the inspection required by paragraph (a) of this AD, submit a report of findings of discrepancies to the Manager, Seattle Manufacturing Inspection District Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; fax (202) 227-1187. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on February 18, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-4735 Filed 2-28-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. 91N-0232]

Physical Medicine Devices; Revocation of the Classification of Mechanical Automobile Hand and Foot Driving Control

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the physical medicine devices regulations by removing the mechanical automobile hand and foot driving control classification regulation. FDA proposes to remove the classification for mechanical automobile hand and foot driving control devices because the agency no longer believes that these products are medical devices. Also, any safety concerns about these products are more appropriately addressed by the National Highway Traffic Safety Administration (NHTSA).

DATES: Comments by May 1, 1992.

ADDRESSES: Written comments may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 23, 1983 (48 FR 53032 at 53048), FDA published a final rule classifying the mechanical automobile hand and foot driving control as a class II medical device. This device is intended to enable persons who have limited use of their arms or legs to drive an automobile. The device allows hand operation of the gas, brake, and clutch pedals or foot operation of the steering and gear shift. Recently, more sophisticated versions of the controls have been developed. These driving controls incorporate a joy stick, a microprocessor, and servo controls. Applications to FDA for approval to market these controls that FDA no longer believes are medical devices have raised questions about vehicle safety that would be more appropriately addressed by NHTSA.

In response to a letter from FDA, NHTSA stated in a letter dated February 19, 1991, that the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392) authorizes NHTSA: (1) To set performance requirements for motor vehicle equipment, (2) to investigate allegations that motor vehicle equipment, such as mechanical hand and foot driving controls, contain defects related to motor vehicle safety, and (3) to take appropriate action. Persons who have additional questions concerning issues related to NHTSA may contact Mary Versailles at 202-366-2992.

Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) and (a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully examined the economic impact of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (Pub. L. 96-395). FDA's issuance of a final rule based on this proposal will have the effect of relieving manufacturers of this equipment from the requirement of complying with FDA's medical device regulations. Therefore, this rule will relieve an existing burden on the industry. If this proposed rule is finalized, manufacturers of this equipment will not be required to comply with FDA's medical device regulations, therefore this rule will relieve an existing burden on the industry. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been analyzed, and it has been determined that the proposed rule is not a major rule as defined in section 1(b) of the Executive Order.

Interested persons may, on or before May 1, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 890 be amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

§ 890.3450 [Removed]

2. Section 890.3450 *Mechanical automobile hand and foot driving control* is removed.

Dated: January 15, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-4600 Filed 2-28-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-152-84]

RIN 1545-AH09

Definition of Affiliated Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide rules under section 1504(a) setting forth circumstances under which warrants, options, obligations convertible into stock, and other similar interests will be treated as exercised for purposes of determining whether a corporation is a member of an affiliated group. For purposes of these proposed regulations, unless the context otherwise provides, warrants, options, convertible obligations, and similar interests are all referred to as options. This section applies to all provisions under the Internal Revenue Code and Income Tax Regulations to which affiliation within the meaning of section 1504 (with or without exceptions) is relevant, unless otherwise provided in regulations or specified by the Internal Revenue Service in the Internal Revenue Bulletin. These regulations will ensure that the affiliation rules under section 1504(a) are not circumvented through the use of options.

DATES: Written comments, requests to appear and outlines of oral comments to be submitted at the public hearing must be received by March 31, 1992. A public hearing is scheduled for April 14, 1992, at 10 a.m.

ADDRESSES: Send comments to: Commissioner of Internal Revenue, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (CC:CO-152-84), room 5228, Washington, DC 20044. The hearing will be held in room 2615, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Cohen, 202-566-3422 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document proposes to add new regulations §§ 1.1504-0 and 1.1504-4 to 26 CFR part 1.

Overview

The proposed regulations provide guidance regarding circumstances under which options will be treated as exercised for purposes of determining whether the 80 percent voting power and value tests for affiliation under section 1504(a) are satisfied. In general, options will be disregarded in determining whether a corporation is a member of an affiliated group. An option, however, will be treated as exercised for purposes of determining affiliation when a reasonable certainty exists, on a specified measurement date (generally the issuance, modification, or transfer date), that the option will be exercised and the issuance or transfer of the option in lieu of the underlying stock would result (but for these regulations) in the elimination of a substantial amount of federal income tax liability. In each case, the determination of whether an option is reasonably certain to be exercised or whether a substantial amount of federal income tax liability would be eliminated is based on all the facts and circumstances. Options which do not have an abuse potential, such as publicly traded options, employee stock options, and options granted in connection with a bona fide loan agreement are generally excepted from these regulations. Safe harbors are provided for other options, which based on their terms, do not evidence an abuse potential.

Background

Section 1504 of the Internal Revenue Code, the "Code", defines the term "affiliated group". Under section 1504, an affiliated group consists of one or more chains of includible corporations connected through stock ownership with a common parent corporation which is also an includible corporation, but only if the common parent owns directly stock possessing at least 80 percent of the total voting power and value of at least one of the other includible corporations and at least 80 percent of the total voting power and value of each of the includible corporations (except the common parent) is owned directly by one or more of the other includible corporations.

The Tax Reform Act of 1984 amended the definition of affiliated group to require that the 80 percent test be applied to the value of the stock of each includible corporation as well as its voting power. Congress enacted this amendment in response to certain disproportionate capital structures created by taxpayers that allowed two or more corporations to file consolidated returns in circumstances where a substantial portion of the equity of a consolidated subsidiary was owned by taxpayers that were not members of the consolidated group. To prevent similar

tax abuses through the use of options, Congress also enacted section 1504(a)(5)(A) and (B) which authorizes the promulgation of regulations under which options are treated as stock or as exercised. These proposed regulations implement section 1504(a)(5)(A) and (B) and provide guidance for determining when options are treated as exercised for purposes of determining whether corporations are affiliated.

These proposed regulations do not treat options as exercised for any other purpose. For example, if a call option that is treated as exercised under these regulations is ultimately exercised, the holding period of the stock acquired by the exercise of the option does not include any period of time prior to the actual exercise of the option.

The dividends received deduction under section 243 is another instance in which the proposed regulations treat options as exercised for purposes of affiliation but not for other purposes. For example, assume P owns all the stock of S, but U, an unrelated party, holds an option that gives it the right to acquire 90 percent of the S stock, and the option is treated as exercised under these regulations. Under these facts, dividends S pays to P are not eligible for the 100 percent dividends received deduction under section 243(a)(3), because P and S are not considered to be affiliated for purposes of section 243(a)(3). However, P is entitled to an 80 percent dividends received deduction under section 243(c), and not just a 70 percent dividends received deduction, because P owns at least 20 percent of the vote and value of S. These proposed regulations do not treat P as owning only 10 percent of the S stock for purposes of section 243(c), because the availability of an 80 percent dividends received deduction under section 243(c) is not determined by reference to affiliation.

Although the proposed regulations do not treat options as exercised for any other purpose, no inference is intended that options will not be treated as stock or as exercised under other provisions of the Code or regulations, or other principles of law.

These proposed regulations do not specifically require that a tax abuse motive exist for an option to be treated as exercised. The tests and safe harbors of the proposed regulations, however, seek to ensure that the regulations apply only to abusive situations.

Options which ordinarily do not have an abuse potential, *i.e.*, publicly traded options, stock purchase agreements, employee stock options, security agreements, and options issued pursuant to a bona fide loan agreement, are generally excepted from the regulations. Safe harbors are also provided that exclude other options which, based on their terms, do not have an abuse potential.

The proposed regulations treat an option as exercised if the following factors are present: (i) The issuance or transfer of the option rather than the underlying stock would result (but for these regulations) in the elimination of a substantial amount of federal income tax liability, and (ii) a reasonable certainty exists on a measurement date (generally the issuance, modification, or transfer date) that the option will be exercised.

General Rules

In general, options are disregarded in determining whether a corporation is a member of an affiliated group. In certain circumstances, however, options are treated as exercised in making this determination.

The proposed regulations provide rules under section 1504(a) setting forth circumstances under which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group.

The proposed regulations generally provide that the term option includes a call option, warrant, convertible obligation, put option, or any other instrument that provides for the right to issue or transfer stock. Any other instrument or right, other than stock itself, pursuant to which the holder may share in the growth of the issuing corporation (*e.g.*, a cash settlement option or an option on an option), is also treated as an option. Provided they are not used as a device to avoid the regulations, the following are not treated as options for purposes of these regulations: An option on stock described in section 1504(a)(4) (certain preferred stock), an option (including a convertible obligation) which is publicly traded (as defined in § 1.1504–4(d)(2)(ii)), a purchase agreement, as escrow, pledge, or security agreement, an option provided to employees, directors, or independent contractors as compensation, and an option granted in connection with a bona fide loan, pledge, or other security agreement.

This section applies to all provisions under the Code and regulations to which affiliation, within the meaning of section 1504 (with or without exceptions), is relevant, unless otherwise provided in these or other regulations or specified by the Internal Revenue Service by published revenue ruling or procedure. For example, § 1.1504–4(a)(2) provides that these regulations do not apply to sections 382(l)(5) or 864 or the regulations thereunder.

Ordinarily, if an option is treated as exercised under these regulations, it is treated as exercised only for purposes of determining the value of the stock of a corporation owned and not the amount of the voting power owned. Thus, if S, a corporation, has only one class of stock outstanding, all of which is owned by P, another corporation, P generally is treated as the owner of all the voting power of S, regardless of the existence of any options. The existence of options on S stock may, however, affect the value of the S stock which P is determined to own. Accordingly, in general, options treated as exercised only break affiliation. However, where the person who would acquire the stock upon exercise of the option, can, prior to exercise of the option, because of the existence of an arrangement (either within the option agreement or in a related agreement), direct the vote of stock of the corporation, the proposed regulations treat the option as exercised for voting power as well. Thus, options treated as exercised may create affiliation, but only if the option holder already owns at least 80 percent of the voting power of that corporation or has indirect voting power constituting at least 80 percent of the voting power of the subsidiary.

The determination of whether an option is treated as exercised is made only on specified measurement dates, as defined in § 1.1504–4(c)(4). The proposed regulations define measurement date generally as a date on which an option is issued or transferred, or on which a modification takes place in the terms of an existing option or the underlying stock. For this purpose, a modification of the terms of an option does not include insignificant changes (*i.e.*, changes that do not increase the likelihood that the option will be exercised) or changes pursuant to the terms of an option that are intended solely to prevent dilution of the interests of the option holder. For example, if the stock of a corporation is split two-for-one, and the terms of an option to acquire that stock include an anti-dilution provision that automatically entitles the holder to acquire twice as many shares of the stock, this change is not a modification for purposes of these regulations and, accordingly, no new measurement date is created. A date on which the capital or asset structure of a corporation changes is a measurement date if a principal purpose of the transaction resulting in the change is to increase the likelihood that the option will be exercised. Generally, a date on which

an option is transferred (i) between members of an affiliated group, or (ii) between persons none of which are related to any member of the affiliated group of which the issuing corporation is a member, is not a measurement date.

These proposed regulations treat an option as exercised only if, on a measurement date, (i) it could reasonably be anticipated that, but for these regulations, the issuance of transfer of the option, in lieu of the underlying stock, will result in the elimination of a substantial amount of federal income tax liability, and (ii) it is reasonably certain that the option will be exercised.

Elimination of a Substantial Amount of Federal Income Tax Liability

The proposed regulations do not define the term "elimination of a substantial amount of federal income tax liability," but provide examples of what constitutes elimination of federal income tax liability. An elimination of tax liability includes both an actual elimination of tax liability (*e.g.*, the use of a net operating loss that would otherwise expire unused) and the deferral of tax liability. Thus, if because of the sale of an option in lieu of a sale of the underlying stock, an affiliated group will reduce its tax liability in one year but will suffer a corresponding increase in its tax liability in a later year, the value of the deferral constitutes an elimination of federal income tax liability.

In determining whether there has been an elimination of federal income tax liability, the tax liabilities of all involved parties (or related parties) are considered. For example, assume that P, S, and T file consolidated returns. P has $1 million in net operating loss carryovers that expire after the current year. Neither P nor T is expected to have any taxable income or loss in the current year. S is expected to generate approximately $750,000 in taxable income in the current year. P sells an option to FC, a foreign corporation, to acquire all the S stock. FC is reasonably certain to exercise the option at the end of the year. Regardless of whether P and S are treated as affiliated for the current year, the P group will have no tax liability. If S is not a member of the P group, the P group will report no taxable income and S will report $750,000 of taxable income on its separate return. On the other hand, if S remains a member of the P group, the tax liability with respect to $750,000 of income will be eliminated because S's taxable income will be offset in the P consolidated return, rather than being taxable in S's separate return. Accordingly, if the option is not treated as exercised, the sale of the option, in lieu of the sale of the S stock, to FC, would result in an elimination of federal income tax liability.

An elimination of federal income tax liability does not exist when the sale of an option eliminates tax liability for one party while another party has a corresponding increase in tax liability. For example, assume P and S file consolidated returns. P is expected to have substantial income in the future and S is expected to have losses in the future. P sells an option to X, which is also expected to have substantial income in the future, to acquire all the S stock. If the option is disregarded, P will eliminate its tax liability by using S's current losses to offset its income. If P had sold the S stock to X in lieu of the option, X and S could file consolidated returns and X would eliminate its tax liability by using S's current losses to offset its income. Accordingly, the sale of the option does not result in the elimination of tax liability and therefore the option is disregarded in determining the affiliation status of P and S.

However, if X had expiring net operating loss carryovers, the sale of the option would result in the elimination of tax liability. If the option were not treated as exercised, the sale of the option would enable P to use S's current losses to offset its income and X would use its expiring losses to offset its income. If the S stock were sold, S's current losses would not be available to offset P's income, but would instead offset X's income and X's carryovers would expire unused.

The proposed regulations set forth a facts and circumstances test for what constitutes a substantial amount of federal income tax liability. Among the factors that are taken into account in determining if there has been an elimination of a substantial amount of federal income tax liability is the absolute amount of the elimination, the relative amount of the elimination (as compared to the group's tax liability without the elimination), and the timing of the elimination. For example, an elimination of $10,000 in current tax liability may be substantial for one affiliated group, but not for a group with a much greater tax liability. In addition, mere deferral of tax liability may constitute a substantial elimination of federal income tax liability. Present value concepts will be used to make this determination. Thus, an elimination of $250,000 in tax liability in year 1 and an addition to tax liability of $250,000 in year 5 may constitute a substantial elimination of federal income tax liability, after taking into account present value concepts.

Reasonable Certainty of Exercise

An option is considered reasonably certain to be exercised only if a strong probability exists that the option will be exercised. The determination of whether an option is reasonably certain to be exercised depends on all the facts and circumstances on a measurement date. For example, the fact that the fair market value of the underlying stock is greater than the exercise price of an option on a measurement date may cause the option to be treated as reasonably certain to be exercised. However, an option issued at the start-up of a venture, the exercise of which depends on the outcome of true business risks, such as the ultimate success of the venture, generally will be treated as not reasonably certain to be exercised.

The proposed regulations provide objective "safe harbors" which treat qualifying options as not being reasonably certain to be exercised. The first safe harbor applies to an option to acquire stock that must be exercised, if at all, within 24 months of a measurement date and that has an exercise price which is equal to or greater than 90 percent (or, in the case of an option to sell stock, equal to or less than 110 percent) of the fair market value of the underlying stock on the measurement date. A second safe harbor applies to an option to acquire stock if the terms of the option provide that the exercise price of the option is equal to or greater than (or, in the case of an option to sell stock, equal to or less than) the fair market value of the underlying stock on the exercise date. The safe harbors do not apply, however, if (i) the option provides the option holder with rights ordinarily afforded to stockholders (*e.g.*, dividend rights or voting rights), (ii) the option is one in a series of options owned by the same or related persons (unless all the options in the series satisfy a safe harbor), or (iii) there was an intention, on a measurement date, to alter the value of a corporation, after the measurement date, by any means, for a principal purpose of increasing the likelihood that the option will be exercised.

For example, if P sold to X an option to acquire S stock, the exercise price of the option was $125 per share, the fair market value of the stock was $100 per share when the option was sold, and the option was exercisable in 24 months, the option generally would satisfy the safe harbor and therefore would not be treated as reasonably certain to be exercised. However, if it was intended

that, after the sale of the option, P would contribute cash to S to increase the likelihood that the option will be exercised, the safe harbor will not apply.

The safe harbors do not apply to any option that in form satisfies the terms of a safe harbor, but that in substance does not. Thus, for example, the safe harbors do not apply if another agreement (whether express or implied) exists, and, as a result, the terms of the option, as modified by such agreement, do not satisfy the safe harbors.

Options which do not satisfy the safe harbors, or for which a safe harbor does not exist, may still be disregarded under the facts and circumstances test. Notwithstanding that an option is disregarded on one measurement date under either the safe harbors or the facts and circumstances test, the option may be treated as exercised on a subsequent measurement date if the safe harbors and facts and circumstances test are no longer satisfied. No special safe harbor has been provided for convertible obligations. The Service invites comments regarding a safe harbor for convertible obligations which would be consistent with the safe harbors provided for other options.

Effective Date

These proposed regulations are proposed to apply, generally, to options with a measurement date on or after February 28, 1992. These regulations do not apply to options issued prior to February 28, 1992 which have a measurement date on or after February 28, 1992, if the measurement date for the option occurs solely because of a modification in the terms of the option pursuant to the terms of the option as it existed on February 28, 1992.

No inference is intended that options with no measurement date on or after February 28, 1992 are to be disregarded for purposes of determining affiliation. In this regard, the Service may apply substance over form principles in determining whether options will be treated as stock or as exercised in appropriate circumstances. *See, e.g.*, Rev. Rul. 82–150, 1982–2 C.B. 110, (corporation that acquires, for a purchase price of $70,000x, an option, with an exercise price of $30,000x, to acquire stock worth $100,000x treated as the actual owner of the stock) and Rev. Rul. 83–98, 1983–2 C.B. 40 (adjustable rate convertible notes worth $600 at maturity that are convertible into stock currently worth $1000 are treated as stock because of the high probability of conversion into stock).

Simplification Measures

The Service welcomes comments and suggestions on ways to reduce the complexity of the proposed regulations, consistent with the legislative intent of section 1504(a)(5). The Service especially encourages comments concerning the safe harbors, as well as suggestions for additional safe harbors and *de minimis* rules, which both substantially further the intent of Congress and significantly reduce the administrative burden on taxpayers and the Service.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A Regulatory Flexibility Analysis is therefore not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for April 14, 1992, at 10 a.m. must be received by March 13, 1992. See notice of hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Kenneth E. Cohen of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1504–0 through 1.1504–4

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; 26 U.S.C. 6038 and 26 U.S.C. 6038A * * * Section 1.1504–4 also issued under 26 U.S.C. 1504(a)(5). * * *

Par. 2. Section 1.1504–0 is added to read as follows:

§ 1.1504–0 Outline of provisions.

In order to facilitate the use of §§ 1.504–1 through 1.1504–4, this section lists the captions contained in §§ 1.1504–1 through 1.1504–4.

(iii) Not in-the-money option.
(iv) Exercise price.
(v) Time of exercise.
(vi) Related or sequential options.
(vii) Stockholder rights.
(viii) Restrictive covenants.
(ix) Intention to alter value.
(x) Contingencies.
(2) Safe harbors.
(i) Options to acquire stock.
(ii) Options to sell stock.
(iii) Options exercisable at fair market value.
(iv) Exceptions.
(v) Failure to satisfy safe harbor.
(h) Examples.
(i) Effective date.

Par. 3. New §§ 1.1504–2 and 1.1504–3 are added and reserved and a new § 1.1504–4 is added to read as follows:

§ 1.1504–2 [Reserved].

§ 1.1504–3 [Reserved].

§ 1.1504–4 Treatment of warrants, options, convertible obligations, and other similar interests.

(a) *Introduction*—(1) *General rule.* This section provides regulations under section 1504(a)(5) (A) and (B) regarding the circumstances in which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group. Except as otherwise provided in this section or another section of the Income Tax Regulations or specified by the Internal Revenue Service by published revenue ruling or procedure, this section applies to all provisions under the Internal Revenue Code and the regulations to which affiliation within the meaning of section 1504 (with or without the exceptions thereto) is relevant.

(2) *Exception.* This section does not apply to sections 382 (l)(5) or 864 or to the regulations thereunder.

(b) *Options not treated as stock or as exercised*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, an option is not considered either as stock or as exercised. Thus, options are disregarded in determining whether a corporation is a member of an affiliated group unless they are described in paragraph (b)(2) of this section.

(2) *Options treated as exercised*—(i) *In general.* Solely for purposes of determining whether a corporation is a member of an affiliated group, an option is treated as exercised if, on a measurement date with respect to such option—

(A) It could reasonably be anticipated that, if not for this section, the issuance or transfer of the option in lieu of the issuance or transfer of the underlying stock will result in the elimination of a substantial amount of federal income tax liability (as described in paragraph (e) and (f) of this section); and

(B) It is reasonably certain that the option will be exercised (as described in paragraph (g) of this section).

(ii) *Effect of treating option as exercised.* If an option is treated as exercised, it—

(A) Is treated as exercised for purposes of determining the relative percentages of the value of stock owned by the holder and other parties; and

(B) It is treated as exercised for purposes of determining the relative percentages of the voting power of stock owned by the option holder and other parties only if, under all the facts and circumstances, the person who would acquire the stock upon exercise of the option, or a related person, can, prior to exercise of the option, because of the existence of an arrangement (either within the option agreement or in a related agreement), direct the vote of stock of the corporation.

(iii) *Valuation.* For purposes of section 1504(a)(2)(B) and this section, in determining the percentage of the value of stock owned, all shares of stock within a single class are considered to have the same value. Thus, control premiums and minority and blockage discounts within a single class are not to be taken into account.

(3) *Example.* The provisions of paragraph (b)(2) of this section may be illustrated by the following example:

Example. (i) Corporation P owns all 100 shares of the common stock of Corporation S, the only class of S stock outstanding. Each share of S stock has a fair market value of $10 and has one vote. On June 30, 1992, P issues to Corporation X an option to acquire 80 shares of the S stock from P. There is no voting agreement within the meaning of paragraph (b)(2)(ii)(B) of this section.

(ii) If, under the provisions of this section, the option is treated as exercised, then, solely for purposes of determining affiliation, P is treated as owning only 20 percent of the value of the outstanding S stock and X is treated as owing the remaining 80 percent of the value of the S stock. P is still treated as owning all of the voting power of S. Accordingly, because P is treated as owning less than 80 percent of the value of the outstanding S stock, P and S are no longer affiliated. However, because X is not treated as owning money of the voting power of S, X and S are also not affiliated.

(c) *Definitions.* For purposes of this section) (1) *Issuing corporation. Issuing corporation* means the corporation whose stock is subject to an option.

(2) *Related or sequential option. Related or sequential option* means an option that is one of a series of options issued to the same or related persons. For purposes of this section, any options issued to the same person or related persons within a two year period are presumed to be part of a series of options. This presumption may be rebutted if the facts and circumstances clearly establish that the options are not part of a series of options. Any options issued to the same person or related persons more than 2 years apart are presumed not to be part of a series of options. This presumption may be rebutted if the facts and circumstances clearly establish that the options are part of a series of options.

(3) *Related persons.* Persons are related if they are related within the meaning of section 267(b) or 707(b)(1), substituting "10 percent" for "50 percent" wherever it appears.

(4) *Measurement date*—(i) *General rule. Measurement date* means a date on which an option is issued or transferred or on which the terms of an existing option or the underlying stock are modified.

(ii) *Issuances, transfers, or modifications not treated as measurement dates.* Except where used as a device to avoid the application of section 1504 and this section, a measurement date does not include a date on which—

(A) An option is issued or transferred by gift, at death, or between spouses or former spouses under section 1041;

(B) An option is issued or transferred—(*1*) Between members of an affiliated group (determined with the exceptions in section 1504(b) and without the application of this section), or

(*2*) Between persons none of which is related to any member of the affiliated group (determined without the exceptions in section 1504(b) and without the application of this section), if any, of which the issuing corporation is a member;

(C) An adjustment occurs in the terms or pursuant to the terms of an option or the underlying stock that is insignificant (*i.e.*, a change that does not increase the likelihood that the option will be exercised); or

(D) A change occurs in the exercise price of an option or in the number of shares which may be issued or transferred pursuant to the option as determined by a bona fide, reasonable, adjustment formula which has the effect of preventing dilution of the interests of the holders of the options.

(iii) *Transactions increasing likelihood of exercise.* A measurement date also includes any date on which—

(A) the capital structure of the issuing corporation is changed, or

(B) The fair market value of the stock of the issuing corporation is altered through a transfer of assets to or from the issuing corporation (other than regular, ordinary dividends) or by any other means.

if the change or alteration referred to in paragraph (c)(4)(iii) (A) or (B) of this section is made for a principal purpose of increasing the likelihood that an option will be exercised.

(iv) *Measurement date for related or sequential options.* In the case of related or sequential options, a measurement date for any of the options constitutes a measurement date for all of the outstanding related or sequential options issued on or prior to the measurement date.

(v) *Example.* The provisions of paragraph (c)(4)(iv) of this section may be illustrated by the following example.

Example. (i) Corporation P owns all 80 shares of the common stock of Corporation S, the only class of S stock outstanding. On January 1, 1992, S issues a warrant, exercisable within 3 years, to U, an unrelated corporation, to acquire 10 newly issued shares of S common stock. On July 1, 1992, S issues a second warrant to U to acquire 10 additional newly issued shares of S common stock. On January 1, 1993, S issues a third warrant to T, a wholly owned subsidiary of U, to acquire 10 newly issued shares of S common stock. Assume that the facts and circumstances do not clearly establish that the options are not part of a series of options.

(ii) January 1, 1992, July 1, 1992, and January 1, 1993, constitute measurement dates for the first warrant, the second warrant, and the third warrant, respectively, because the warrants were issued on those dates.

(iii) Because the first and second warrants were issued within two years of each other, and both warrants were issued to U, the warrants constitute related or sequential options. Accordingly, July 1, 1992, constitutes a measurement date for the first warrant as well as for the second warrant.

(iv) Because the first, second, and third warrants were all issued within two years of each other, and were all issued to the same or related persons, the warrants constitute related or sequential options. Accordingly, January 1, 1993, constitutes a measurement date for the first and second warrants, as well as for the third warrant.

(5) *In-the-money. In-the-money* means the exercise price of the option is less than (or in the case of an option to sell stock, greater than) the fair market value of the underlying stock.

(d) *Options*—(1) *Instruments treated as options.* For purposes of this section, except to the extent otherwise provided in this paragraph (d), the following are treated as options:

(i) A call option, warrant, convertible obligation, put option, or any other instrument that provides for the right to issue or transfer stock; and

(ii) Any other instrument or right (except for stock itself) pursuant to which the holder may share in the growth of the issuing corporation (*e.g.*, a cash settlement option or an option on an option).

(2) *Instruments generally not treated as options.* For purposes of this section, provided they are not used as a device to avoid the application of section 1504 and this section, the following will not be treated as options:

(i) *Options on section 1504(a)(4) stock.* Options on stock described in section 1504(a)(4);

(ii) *Publicly traded options.* Options traded on (or subject to the rules of) a qualified board or exchange as defined in section 1256(g)(7), or on any other exchange, board of trade, or market specified by the Internal Revenue Service in the Internal Revenue Bulletin;

(iii) *Stock purchase agreements.* Stock purchase agreements in which the parties' obligations to complete the transaction are subject only to reasonable closing conditions;

(iv) *Escrow, pledge, or other security agreements.* Agreements for holding stock in escrow or under a pledge or other security agreement that are part of a typical commercial transaction and that are subject to customary commercial conditions;

(v) *Stock appreciation rights, warrants, stock options, phantom stock, and similar arrangements.* Stock appreciation rights, warrants, stock options, phantom stock, or other similar arrangements provided to employees, directors, or independent contractors as compensation (which is not excessive by reference to services performed) and which—

(A) Are nontransferable within the meaning of § 1.83–3(d), and

(B) Do not have a readily ascertainable fair market value as defined in § 1.83–7(b) on the measurement date.

If the stock appreciation rights, warrants, stock options, phantom stock, or other similar arrangements become transferable, this paragraph (d)(2)(v) ceases to apply;

(vi) *Options granted in connection with a loan.* Options granted in connection with a loan if the lender is actively and regularly engaged in the business of lending and are issued in connection with a loan that is commercially reasonable; and

(vii) *Other enumerated instruments.* Any other instruments specified by the Internal Revenue Service in the Internal Revenue Bulletin.

(e) *Elimination of federal income tax liability.* For purposes of this section, the elimination of federal income tax liability includes the elimination or deferral of federal income tax liability. In determining whether there is an elimination of federal income tax liability, the tax consequences to all involved parties are considered. Examples of elimination of federal income tax liability include the use of a loss or deduction that would not otherwise be utilized, the acceleration of a loss or deduction to a year earlier than the year in which the loss or deduction would otherwise be utilized, the deferral of gain or income to a year later than the year in which the gain or income would otherwise be reported, and the acceleration of gain or income to a year earlier than the year in which the gain or income would otherwise be reported, if such gain or income would otherwise be reported, if such gain or income is offset by a net operating loss or net capital loss that would otherwise expire unused. The elimination of federal income tax liability does not include the deferral of gain with respect to the stock subject to the option that would be recognized if such stock were sold on a measurement date.

(f) *Substantial amount of federal income tax liability.* The determination of what constitutes a substantial amount of federal income tax liability is based on all the facts and circumstances, including the absolute amount of the elimination, the amount of the elimination relative to overall tax liability, and the timing of items of income and deductions, taking into account present value concepts.

(g) *Reasonable certainty of exercise*—(1) *Generally.* The determination of whether, as of a measurement date, an option is reasonably certain to be exercised is based on all the facts and circumstances, including:

(i) *Purchase price.* The purchase price of the option in absolute terms and in relation to the fair market value of the stock or the exercise price of the option;

(ii) *In-the-money option.* Whether and to what extent the option is in-the-money on the measuremnt date;

(iii) *Not in-the-money option.* If the option is not in-the-money on the measurement date, the amount or percentage by which the exercise price of the option is greater than (or in the case of an option to sell stock, is less than) the fair market value of the underlying stock;

(iv) *Exercise price.* Whether the exercise price of the option is fixed or fluctuates depending on the earnings, value, or other indication of economic performance of the issuing corporation;

(v) *Time of exercise.* The time at which, or the period of time during which, the option can be exercised;

(vi) *Related or sequential options.* Whether the option is one in a series of related or sequential options;

(vii) *Stockholder rights.* The existence of an arrangement (either within the option agreement or in a related agreement) that, directly or indirectly, affords managerial or economic rights in the issuing corporation that ordinarily would be afforded to owners of the issuing corporation's stock (*e.g.*, voting rights, dividend rights, or rights to proceeds on liquidation) to—

(A) The person who would acquire the stock upon exercise of the option; or

(B) A person related to such person;

(viii) *Restrictive covenants.* The existence of restrictive covenants or similar arrangements (either within the option agreement or in a related agreement) that, directly or indirectly, prevent or limit the ability of the issuing corporation to undertake certain activities while the option is outstanding (*e.g.*, covenants limiting the payment of dividends or borrowing funds);

(ix) *Intention to alter value.* Whether it was intended that through a change in the capital structure of the issuing corporation or a transfer of assets to or from the issuing corporation (other than regular, ordinary dividends) or by any other means, the fair market value of the stock of the issuing corporation would be altered for a principal purpose of increasing the likelihood that the option would be exercised; and

(x) *Contingencies.* Any contingency (other than the mere passage of time) to which the exercise of the option is subject (*e.g.*, a public offering of the issuing corporation's stock or reaching a certain level of earnings).

(2) *Safe harbors*—(i) *Options to acquire stock.* Except as provided in paragraph (g)(2)(iv) of this section, an option to acquire stock will not be considered reasonably certain, as of a measurement date, to be exercised if—

(A) The option must be exercised no more than 24 months after the measurement date and the exercise price is equal to or greater than 90 percent of the fair market value of the underlying stock on the measurement date; or

(B) The terms of the option provided that the exercise price of the option is equal to or greater than the fair market value of the underlying stock on the exercise date.

(ii) *Options to sell stock.* Except as provided in paragraph (g)(2)(iv) of this section, an option to sell stock will not be considered reasonably certain, as of a measurement date, to be exercised if—

(A) The option must be exercised no more than 24 months after the measurement date and the exercise price is equal to or less than 110 percent of the fair market value of the underlying stock on the measurement date; or

(B) The terms of the option provide that the exercise price of the option is equal to or less than the fair market value of the underlying stock on the exercise date.

(iii) *Options exercisable at fair market value.* For purposes of paragraphs (g)(2)(i)(B) and (g)(2)(ii)(B) of this section, an option whose exercise price is determined by a formula will be considered to have an exercise price equal to the fair market value of the underlying stock on the exercise date if the formula is agreed upon by the parties when the option is issued in a bona fide attempt to arrive at fair market value on the exercise date and is to be applied based upon the facts in existence on the exercise date.

(iv) *Exceptions.* The safe harbors of this paragraph (g)(2) will not apply if—

(A) An arrangement exists that provides the holder with stockholder rights described in paragraph (g)(1)(vii) of this section (except for rights arising upon a default under the option or a related agreement);

(B) It is intended that through a change in the capital structure of the issuing corporation or a transfer of assets to or from the issuing corporation (other than regular, ordinary dividends) or by any other means, the fair market value of the stock of the issuing corporation would be altered for a principal purpose of increasing the likelihood that the option would be exercised; or

(C) The option is one in a series of related or sequential options, unless all such options satisfy paragraph (g)(2) (i) or (ii) of this section.

(v) *Failure to satisfy safe harbor.* Failure of an option to satisfy one of the safe harbors of this paragraph (g)(2) does not affect the determination of whether an option is treated as reasonably certain to be exercised.

(h) *Examples.* The provisions of this section may be illustrated by the following examples. These examples assume that the measurement dates set forth in the examples are the only measurement dates that have taken place or will take place.

Example 1. (i) P is the common parent of consolidated group, consisting of P, S, and T. P owns all 100 shares of S's only Class of stock, which is voting common stock. P also owns all the stock of T. On June 30, 1992, when the fair market value of the S stock is $40 per share, P sells to U, an unrelated corporation, an option to acquire 40 shares of the S stock that P owns at an exercise price of $30 per share, exercisable at any time within 3 years after the granting of the option. S has had substantial losses for 5 consecutive years while P and T have had substantial income during the same period. Because P, S, and T have been filing consolidated returns, P and T have been able to use all S's losses to offset their income. It is anticipated that P, S, and T will continue their earnings histories for several more years. On July 31, 1992, S declares and pays a dividend of $1 per share to P.

(ii) If, P, S, and T continue to file consolidated returns after June 30, 1992, it could reasonably be anticipated that the P group would eliminate a substantial amount of federal income tax liability by using S's future losses in its consolidated returns. Furthermore, based on the difference between the exercise price of the option and the fair market value of the S stock, it is reasonably certain, on June 30, 1992, a measurement date, that the option will be exercised. Therefore, the option held by U is treated as exercised. As a result, for purposes of determining whether P and S are affiliated, P is treated as owning only 60 percent of the value of outstanding shares of S stock and U is treated as owning the remaining 40 percent. P is still treated as owning 100 percent of the voting power. Because members of the P group are no longer treated as owning stock possessing 80 percent of the total value of the S stock as of June 30, 1992, S is no longer a member of the P group. Additionally, P is not entitled to a 100 percent dividends received deduction under section 243(a)(3) because P and S are also treated as not affiliated for purposes of section 243. P is only entitled to an 80 percent dividends received deduction under section 243(c).

Example 2. (i) The facts are the same as in *Example 1* except that the option gives U the right to acquire all 100 shares of the S stock, and U is the common parent of a consolidated group. The U group has had substantial income for 5 consecutive years and it is anticipated that the U group will continue its earnings history for several more years.

(ii) If P sold the S stock, in lieu of the option, to U, S would become a member of the U group. Because the U group files consolidated returns, if P sold the S stock to U, U would be able to use S's future losses to offset future income of other members of the U group. When viewing the transaction for the effect on all parties, the sale of the option, in lieu of the underlying S stock, does not result in the elimination of federal income tax liability because S's losses would be used to offset the income of members of either the P or U group. Accordingly, the option is disregarded and S remains a member of the P group.

Example 3. (i) P is the common parent of a consolidated group, consisting of P and S. P owns 90 of the 100 outstanding shares of S's only class of stock, which is voting common stock, and U, an unrelated corporation, owns the remaining 10 shares. On August 31, 1992, when the fair market value of the S stock is $100 per share, P sells a call option to U

which entitles U to purchase 20 shares of S stock from P, at any time before August 31, 1993, at an exercise price of $115 per share. the call option does not provide U with any voting rights, dividend rights, or any other managerial or economic rights ordinarily afforded to owners of the S stock. There is no intention on August 31, 1992, to alter the value of S to increase the likelihood of the exercise of the call option.

(ii) Because the exercise price of the call option is equal to or greater than 90 percent of the fair market value of the S stock on August 31, 1992, a measurement date, the option must be exercised, if at all, within 24 months of the measurement date, and none of the items described in paragraph (g)(2)(iv) of this section which preclude application of the safe harbor are present, the safe harbor of paragraph (g)(2)(i) of this section applies and the call option is treated as if it is not reasonably certain to be exercised. Therefore, regardless of whether the continued affiliation of P and S would result in the elimination of a substantial amount of federal income tax liability, the call option is disregarded in determining whether S remains a member of the P group.

Example 4. (i) The facts are the same as in *Example 3* except that the call option gives U the right to vote similar to that of a shareholder.

(ii) Under paragraph (g)(2)(iv) of this section, the safe harbor of paragraph (g)(2)(i) of this section does not apply because the call option entitles U to voting rights equivalent to that of a shareholder. Accordingly, all of the facts and circumstances surrounding the sale of the call option must be taken into consideration in determining whether it is reasonably certain that the call option will be exercised.

Example 5. (i) In 1992, two unrelated corporations, X and Y, decide to engage jointly in a new business venture. To accomplish this purpose, X organizes a new corporation, S, on September 30, 1992. X acquires 100 shares of the voting common stock of S, which are the only shares of S stock outstanding. Y acquires a debenture of S which is convertible, on September 30, 1995, into 100 shares of S common stock. If the conversion right is not exercised, X will have the right, on September 30, 1995, to put 50 shares of its S stock to Y in exchange for 50 percent of the debenture held by Y. The likelihood of the success of the venture is uncertain. It is anticipated that S will generate substantial losses in its early years of operation. X expects to have substantial taxable income during the three years following the organization of S.

(ii) Under the terms of this arrangement, it is reasonably certain, on September 30, 1992, a measurement date, that on September 30, 1995, either through Y's exercise of its conversion right or X's right to put S stock to Y, that Y will own 50 percent of the S stock. Additionally, it could reasonably be anticipated, on September 30, 1992, a measurement date, that the affiliation of X and S would result in the elimination of a substantial amount of federal income tax liability. Accordingly, for purposes of determining whether X and S are affiliated, X is treated as owning only 50 percent of the value of the S stock as of September 30, 1992, a measurement date, and S is not a member of the X affiliated group.

Example 6. (i) The facts are the same as in *Example 5* except that rather than acquiring 100 percent of the S stock and the right to put S stock to Y, X acquires only 80 percent of the S stock, while S, rather than acquiring a convertible debenture, acquires 20 percent of the S stock, and an option to acquire an additional 30 percent of the S stock. The terms of the option are such that the option will only be exercised if the new business venture succeeds.

(ii) In contrast to *Example 5*, because of the true business risks involved in the start-up of S and whether the business venture will ultimately succeed, along with the fact that X does not have an option to put S stock to Y, it is not reasonably certain on September 30, 1992, a measurement date, that the option will be exercised and that X will only own 50 percent of the S stock on September 30, 1995. Accordingly, the option will be disregarded in determining whether S is a member of the X group.

(i) *Effective date.* This section applies, generally, to options with a measurement date on or after February 28, 1992. This section does not apply to options issued prior to February 28, 1992 which have a measurement date on or after February 28, 1992 if the measurement date for the option occurs solely because of a modification in the terms of the option pursuant to the terms of the option as it existed on February 28, 1992.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92-4378 Filed 2-28-92; 8:45 am]

BILLING CODE 4830-01-M

---

26 CFR Part 1

[CO-152-84]

RIN 1545-AH09

Definition of Affiliated Group; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations that provide rules under section 1504(a) setting forth circumstances under which warrants, options, obligations convertible into stock, and other similar interests will be treated as exercised for purposes of determining whether a corporation is a member of an affiliated group.

DATES: The public hearing will be held on Tuesday, April 14, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, March 24, 1992.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (CO-152-84), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations proposing to add new regulations §§ 1.1504-0 and 1.1504-4 to 26 CFR part 1 under section 1504(a)(5)(A) and (B) of the Internal Revenue Code. The proposed regulations provide guidance regarding circumstances under which options will be treated as exercised for purposes of determining whether the 80 percent voting power and value tests for affiliation under section 1504(a) are satisfied. These regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, March 24, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-4379 Filed 2-28-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 92-008]

Special Local Regulations: St. Johns River, Intracoastal Waterway—Pablo Creek, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to adopt special local regulations for the Greater Jacksonville Kingfish Tournament. The event will be held on the St. Johns River and on Pablo Creek, Florida, annually the second or third week in July on Thursday, Friday and Saturday. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before April 1, 1992.

ADDRESSES: Comments should be mailed to Commander, U.S. Coast Guard Group, 4200 Ocean Street, Mayport, FL 32267-0385. The comments and other material referenced in this notice will be available for inspection and copying at this same address. Normal office hours are between 7 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: CDR D.P. Rudolph, (904) 247-7318.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD7 91-008) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information

The drafters of this notice are QM1 Culver, Marine Event Petty Officer, Coast Guard Group Mayport and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations:

The Greater Jacksonville Kingfish Tournament is held annually with approximately one thousand vessels participating. A check-out/check-in station will be established in the vicinity of St. Johns River Lighted Buoy 11 (LLNR 6720) position 30-24-05.61 N, 081-25-06.07 W. Participating vessels shall not check-out earlier than 6:30 a.m. EDT, and the fishing day will end at 4 p.m. EDT. In the past, the Coast Guard has established temporary special local regulations in order to provide for the safety of life on the navigable waters during the effective times. Due to the size and nature of this event, the Coast Guard now feels that a permanent description of this event and the establishment of permanent regulations in the Code of Federal Regulations (CFR) would better serve the boating public by creating a permanent reference. Notice of the specific dates and times for this event will be published annually in the Seventh Coast Guard District Local Notice to Mariners. This regulation is issued pursuant to 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this, because the regulated area encompasses approximately an 8 and ¾ mile stretch of water on St. Johns River and Pablo Creek, from St. Johns River Lighted Buoy 7 (LLNR 6665) position 30-23-56 N, 081-23-04 W, west to Mile Point Lighted Buoy 24 (LLNR 6805) position 30-22-58 N, 081-27-21 W, then south on Pablo Creek to the Atlantic Beach Bridge, Jacksonville, Florida, and will impede the natural flow of traffic for only four hours each day. This event is not expected to affect commercial activities on the St. Johns River or Pablo Creek.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B and Commandant Instruction 16751.3A, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service regarding the environmental impact of this event, and it was determined that the event does not threaten protected species.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35-07008 is added to read as follows:

§ 100.35-07008 Annual Greater Jacksonville Kingfish Tournament.

(a) *Regulated Area:* A regulated area is established for the waters of the St. Johns River lying between an eastern boundary formed by St. Johns River Lighted Buoy 7 (LLNR 6665) position 30-23-56 N, 081-23-04 W, and Lighted Buoy 8 (LLNR 6670) position 30-24-03 N, 081-23-01 W, and a western boundary formed by Mile Point Lighted Buoy 24 (LLNR 6805) position 30-22-58 N, 081-27-21 W, and Pablo Creek Daybeacon 2 (LLNR 32605) position 30-22-52 N, 081-27-31 W, with the northern and southern boundaries formed by the banks of the St. Johns River. Then, from the eastern boundary on the St. Johns River, the regulated area continues south on the waters of Pablo Creek to the Atlantic Beach Bridge, Jacksonville, Florida.

(b) *Special Local Regulations:* A No Wake Zone is established on the waters of the St. Johns River lying between the eastern boundary formed by St. Johns River Lighted Buoy 7 (LLNR 6665) position 30-23-56 N, 081-23-04 W, and Lighted Buoy 8 (LLNR 6670) position 30-24-03-N, 081-23-01 W, and the western

boundary formed by Mile Point Lighted Buoy 24 (LLNR 6805) position 30–22–58 N, 081–27–21 W, and Pablo Creek Daybeacon 2 (LLNR 32605) position 30–22–52 N, 081–27–31 W, with the northern and southern boundaries formed by the banks of the St. Johns River. A Minimum Wake Zone is established from the boundary formed by Mile Point Lighted Buoy 24 (LLNR 6805) position 30–22–58 N, 081–27–21 W, and Pablo Creek Daybeacon 2 (LLNR 32605) position 30–22–52 N, 081–27–31 W, south on Pablo Creek to the Atlantic Boulevard Bridge.

(c) *Effective Dates:* The Commander, Coast Guard Group Mayport will publish the effective times and dates during which these regulations will be in effect in the Seventh Coast District Local Notice to Mariners and the Federal Register.

Dated: February 3, 1992.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 92–4369 Filed 2–28–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 750 and 761

[OPPTS–66011; FRL 3886–9]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions and Use Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and the use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these PCB activities if the Administrator finds that they will not present an unreasonable risk of injury to human health or the environment. This proposed rule addresses six individual petitions under TSCA section 6(e)(3)(B) for exemption from the prohibition against the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). This proposed rule identifies two petitions which EPA proposes to deny, three petitions which EPA proposes to grant, and one which has been withdrawn by the petitioner. EPA proposes one use authorization under TSCA section 6(e)(2)(B). In addition, EPA is amending the Interim Procedural Rules to require the submission of a certified letter at least 6 months prior to the expiration date of the exemption for any PCB activity that EPA has approved and for which the petitioner wishes EPA approval to continue. EPA hereby invites comments on these proposed actions.

DATES: Comments on this proposed rule must be submitted by April 16, 1992. If requested, an informal hearing, will be held in Washington, DC. For the exact time and location of the hearing, telephone EPA's Environmental Assistance Division listed under "FOR FURTHER INFORMATION CONTACT." Request to participate in the informal hearing must be received by April 16, 1992.

ADDRESSES: Three copies of comments identified with the docket number OPPTS–66011 must be submitted to: TSCA Public Docket Office (TS–793), Office of Pollution Prevention and Toxics, rm. NE–G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A public record has been established and is available in the TSCA Public Docket Office at the above address from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and the use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these PCB activities if the Administrator finds that they will not present an unreasonable risk of injury to human health or the environment. TSCA provides that EPA may set terms and conditions including recordkeeping and reporting requirements for granting an exemption.

I. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, the processing and distribution in commerce of PCBs after July 1, 1979, and the use of PCBs after October 11, 1977, unless otherwise authorized. While, section 6(e)(2)(A) of TSCA bans the use of PCBs in any manner other than a totally enclosed manner, section 6(e)(2)(B) provides that the Administrator may by rule authorize the use of PCBs if such use will not present an unreasonable risk of injury to health or the environment. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs in a manner other than totally enclosed. Section 6(e)(3)(B) provides that any person may petition the Administrator for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or the environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

EPA's Interim Procedural Rules for Manufacturing, Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the Federal Register of May 31, 1979 (44 FR 31514) and are codified at 40 CFR 750.10 through 750.41. EPA's Procedural Rule for rulemaking under section 6 of TSCA, which governs use authorizations for PCBs, is found at 40 CFR 750.1 through 750.9.

In this document, EPA is proposing to amend the Interim Procedural Rules for exemptions to address requests to continue the exempted activity beyond the 1–year period allowed for exemptions. For a petitioner who has been granted an exemption in this rule or in any rule hence and who wishes to renew that exemption petition, a certified letter must be submitted to the Agency stating that an extension is desired and that the specific type(s) of PCB activities, the PCB amounts, the PCB handling procedures and all other activities specified in the original exemption request have not been changed.

To provide the EPA with sufficient time to include the renewal submission into the next PCB exemption rulemaking, a certified letter must be submitted to the EPA at least 6 months

prior to the anniversary of the expiration date of the originally granted exemption.

If the extension submission is not received at least 6 months prior to the expiration date, or if there are any changes from the original petition which result in an increase in the amounts of PCBs or a change in the manner in which they are handled, EPA will consider the submission to be a petition for a new exemption. The original exemption activities must cease at the 1-year expiration date. Although this amendment does not affect exemption petitions granted by EPA prior to the publication of this proposed rule, any petitioner for an exemption who wishes to alter the activities as previously approved by the Agency in granting the exemption must refrain from any of the activities requested for by the change (i.e., the new petition) until EPA makes a determination by rulemaking. EPA will review the revised petition during the next rulemaking process and determine whether to grant or deny the new exemption.

B. History of this Rulemaking

EPA has received for consideration six new exemption petitions under TSCA section 6(e)(3)(B) which are the subject of this proposed rule. One petition requests approval to distribute in commerce for export small quantities of PCBs for the purpose of research and development. One petition requests approval to process and distribute in commerce for export small quantities of PCBs for the purpose of research and development. One petition requests to import from Canada, PCBs in oil and soil for laboratory analysis, and to export these samples following their analysis. One petition requested to import capacitors and voltage transformers, which were inadvertently shipped into Canada, back into the United States for the purpose of disposal. This petition has been withdrawn. One petition requests an exemption to distribute in commerce for export PCB-Contaminated Transformers for salvage to the Far East. The final petition requests approval to process and distribute in commerce analytical reference samples derived from actual waste materials.

II. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to demonstrate that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the benefits to society from granting or denying each petition. Specifically, EPA considers the following factors:

A. Effects of PCBs on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment.

1. *Health effects.* EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, can circulate throughout the body, and can be stored in the fatty tissue.

2. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known, which decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. This ultimately results in human exposure through consumption of PCB-containing food sources.

3. *Risks.* Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, PCBs may cause developmental toxicity, reproductive effects, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

A lengthy discussion of these factors is provided in the preamble to the August 24, 1988 proposed exemption rule (53 FR 32327) (Docket number OPTS 66008F).

B. Benefits and Costs

The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA has taken benefits and costs into consideration when evaluating each exemption petition.

III. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to demonstrate a good faith effort to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has demonstrated good faith efforts. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs. To satisfy this finding for requests for an exemption to import PCBs, a petitioner must show why such activity must occur in the United States and what steps will be taken to eliminate the need to import PCBs in the future.

IV. Explanation of Class Exemption for Research and Development

Distinct from its authority to exempt PCBs from the ban on manufacturing, processing, and distribution in commerce, EPA may also authorize the use of PCBs. EPA authorized, indefinitely, the use of PCBs in small quantities for research and development in the Use Authorization Rule, 40 CFR 761.30(j), published in the **Federal Register** of July 10, 1984 (Docket OPTS 66008B). "Small quantities for research and development" is defined at 40 CFR 761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of PCBs, but not for research or analysis for the development of a PCB product." The distribution in commerce of PCBs in small quantities for use in research and development is allowed via a class exemption in the PCB Exemptions Rule, 40 CFR 761.80(g), published in the **Federal Register** of August 8, 1986 (51 FR 28556) (Docket number OPTS 66008E). This rule eliminated the need for each person who distributes in commerce PCBs to file an individual exemption petition. EPA placed the following terms and conditions on the class exemption: (a) That all processors and distributors maintain records of their PCB activities for a period of 5 years; and (b) that any person or company that expects to distribute in commerce 100 grams (0.22 lb.) or more PCBs for research and development in 1 year must report to EPA and identify the sites of PCB activities and the quantities of PCBs to be distributed in commerce.

In granting a class exemption, EPA retains the authority to terminate the class exemption, or to exclude any distributor from the class exemption, upon determining the activities allowed in the class exemption will pose an unreasonable risk of injury to health or the environment. Any changes in the disposition of the class exemption, or the status of individuals within the class exemption, will be published in a notice of proposed rulemaking and the

petitioners will be allowed to continue activities until a final rule is promulgated.

V. Disposition of Pending Exemption Petitions

A. Import

EPA received one exemption petition to import PCBs.

General Motors Corp (GMC). On August 31, 1987, GMC requested an exemption to import PCBs in indoor constant voltage transformers into the United States from Canada, solely for the purposes of disposal.

Decision on petition. On February 14, 1991, GMC withdrew this petition. As such, EPA takes no action on the submitted GMC exemption petition.

B. Import and Export

EPA received one exemption petition to import and export PCBs.

National Chem Lab. On December 3, 1987, EPA received a petition from National Chem Lab to import small test samples of oil and soil from Canadian Electric Utilities and to export these samples following their analysis.

a. *Current petition.* The sample sizes would be less than 6 milliliters per sample of oil and less than 4 ounces of soil. These samples would then be analyzed for PCB content. These small laboratory test samples would be exported back to the utility that submitted them following their analysis. National Chem Lab estimates that 5.072 ounces by volume of 0.283 pounds by weight would be used per year. These figures were based on a sample submittal rate of 10,000 per year with 15 percent of the submitted samples containing PCB concentrations over 50 ppm.

The residue that evolves from distillation of the solvent used in the extraction process would be included in a common Department of Transportation (DOT) approved container and sent to an incinerator for disposal as required by the PCB disposal rules of 40 CFR 761.60. The extremely small amounts of PCBs that would be retained by National Chem Lab in testing for a contamination level would be disposed of in the United States as required in the PCB disposal rules.

The economic consequences of denial would cost National Chem Lab an estimated income of $150,000 per year and result in a staffing level of three fewer employees. National Chem Lab also maintains that this petition for exemption would enable it to expand its facilities and generate jobs in an area of Eastern Washington which badly needs jobs in non-agricultural enterprises.

b. *Decision on petition.* EPA has determined to deny this exemption petition. EPA has determined that the import (manufacture) of PCBs into the United States and the distribution in commerce of PCBs present an unreasonable risk of injury to human health and the environment (See 40 CFR 761.20 and 44 FR 31514, 31537, May 31, 1979). EPA has also stated that "[i]t is the clear intent of TSCA to minimize the addition of PCBs to the environment of the United States." Id. In 1980, EPA closed the border to encourage foreign countries to develop their own capacity for properly handling and disposing of hazardous waste. (See 45 FR 29115, May 1, 1980, filed at Docket number OPTS 66006). Also, National Chem Lab has failed to provide evidence that both Canadian and provincial border regulations will accept the PCBs returned to Canada after the PCB analysis. Further, EPA has determined that the petitioner has not met the good faith efforts criterion. Although no non-PCB substitutes for PCB analytical standards currently exist, the petitioner has not demonstrated or provided any convincing rationale as to why there is a necessity for the PCBs to be imported into the United States, solely for the purpose of analysis. According to the Canadian Association for Environmental Analytical Laboratories there are analytical laboratories within Canada for conducting PCB analysis. EPA does not want to encourage the expansion of PCB products or PCB services for companies when there are feasible alternatives already in place. Implied in the petitioner's exemption is a request to export the samples after analysis. Since EPA is proposing to deny the request to import, it is not addressing the request to export the samples back to their site of generation after analysis.

C. Export

EPA received two petitions relating to PCBs involved in research and development. Both petitioners are also requesting to export the PCBs and, therefore, the petitions are discussed in this section.

1. *NSI Technology Services Corp (NSIT).* On November 16, 1987, NSIT (formerly known as Northrop Services, Inc.) submitted an exemption petition to export small quantities of PCBs for research and development to the International Monitoring Community for use in the identification and quantification of environmental contaminants. The annual export amount is estimated to be less than 500 grams of PCBs. On February 12, 1991, NSIT amended its petition and notified EPA that the company name had been changed to ManTech Environmental Technology, Inc. and Subsidiary (ManTech).

a. *Current petition.* ManTech obtains PCBs for environmental monitoring purposes and prepares analytical reference standards which are provided for a charge to laboratories engaged in monitoring activities.

The PCB standards would be available in solution (1.5 ml each) or in neat, essentially pure form in 50 to 100 mg aliquots. PCBs in the form of Aroclor mixtures as well as individual isomers, would be distributed in sealed 2-mL ampuls in accordance with requirements of the class exemption requirements. The total amount of PCBs to be exported in 1 year would not exceed 500 grams.

The standards would be packaged in sealed, glass primary ampules, labeled and placed in heat-seal bags with appropriate labelling. The neat standards would then be wrapped individually in several layers of absorbent packaging material, placed in a secondary heat-seal bag, and then in a standard corrugated cardboard container which would be filled with cushioning material and sealed with reinforced paper tape.

Solution standards would be placed in the first heat-seal bag, then placed in form-fitting styrofoam containers which are wrapped in cellucrepe material and placed in a secondary heat-seal bag. They would then be inserted into a padded mailer and sealed with fiberglass tape. Both of these packaging protocols conform to the requirements of DOT's regulation governing the packaging of small quantities of hazardous materials.

According to the letter submitted by ManTech on February 21, 1991, there is a charge for the standards which would accrue an estimated amount of $60,000 per year in sales from the foreign distribution of the analytical samples.

ManTech also maintains that it makes an effort to support and encourage good quality assurance practices to several thousand laboratories in 93 foreign countries.

b. *Decision on petition.* EPA has determined to grant the ManTech petition. EPA believes that the export of PCBs in small quantities for research and development does not pose an unreasonable risk of injury to human health or the environment due to the quantity, viscosity, marking and packaging of the PCBs, as well as, the careful handling of the PCBs by trained personnel. Since there are no substitutes for PCB analytical samples, the good faith efforts finding has been met.

ManTech is prohibited from exporting PCBs in excess of the amounts and quantities specified in its petition and will be required to petition EPA to increase the quantity or change the manner of handling PCBs under the ManTech exemption. EPA will consider any such change as a new exemption petition and address the request by rulemaking. If ManTech wishes to continue its export activities beyond the 1-year timeframe, according to the EPA approved exemption, a certified letter, pursuant to the amendment for the Interim Procedural Rules addressed in this rule, must be submitted to EPA at least 6 months prior to the expiration of the exemption.

2. *Restek Corporation.* On June 8, 1990, Restek requested an exemption to process and distribute in commerce for export small quantities of PCBs for research and development to calibrate analytical instruments.

a. *Current petition.* Restek seeks to process and distribute small quantities (less than 100 grams/year) of PCBs for research and development under 40 CFR 761.80. The PCBs would be purchased from companies already exempted by EPA, then diluted to a concentration of 1000 μg/mL in solvent. The only processing would be to prepare gravimetric standards of the PCBs. The concentration of these standards would be verified by gas chromatography. Once verified, these solutions will be packaged in a flame sealed, amber, glass ampul in volumes of 1 milliliter. The sealed ampuls would be overwrapped in a plastic tube with adequate cushioning to prevent damage during shipment. These solutions would be shipped via common carrier domestically and exported to foreign customers. Restek would comply with all relevant DOT and overseas shipping regulations.

All processing and distribution would be performed at/from the Restek Corp. facility at 110 Benner Circle, Bellefonte, PA. The estimated amount of PCBs to be processed and distributed in commerce, both domestic and foreign, would not exceed 100 grams per year. Restek maintains that the small amounts of laboratory waste generated during the production procedures would be collected and disposed of in accordance with all Federal, State, and local regulations and the total amount of waste to be less than 1 gram per year. Restek maintains that all PCBs would be handled by qualified organic chemists.

There are no substitutes available which can be used to calibrate analytical instrumentation for PCBs. Restek estimates that the cost of denial of this petition could cause a loss of business amounting to $280,000 per year.

b. *Decision on petition.* EPA has determined to grant the Restek petition. EPA believes that the export of PCBs in small quantities for research and development does not pose an unreasonable risk of injury to human health or the environment due to the quantity, viscosity, marking, and packaging of the PCBs, as well as, the careful handling of the PCBs by trained personnel. Further, since no PCB substitutes exist for analytical standards of PCBs, the good faith efforts criterion has been met.

Restek is prohibited from exporting PCBs in excess of the amounts and quantities specified in their exemption petition and will be required to petition EPA to increase the quantity or change the manner of handling PCBs under the Restek exemption. EPA will consider any such change as a new exemption petition and address the request by rulemaking. If Restek wishes to continue its export activities beyond the 1-year timeframe, according to the EPA approved exemption, a certified letter, pursuant to the amendment for the Interim Procedural Rules addressed in this rule, must be submitted at least 6 months prior to the expiration of the exemption.

3. *Joseph Simon Sons.* On April 9, 1987, Joseph Simon Sons, Inc. requested an exemption to distribute in commerce and export for disposal PCB-Contaminated Transformers that have been drained of all free-flowing liquids.

a. *Current petition.* The drained electrical transformers would be packaged in shipping containers at locations in the states of Utah, California, and Washington and then shipped to the Far East for salvage. To ensure that all electrical transformers being exported had contained fluid with a PCB concentration of less than 500 ppm, Joseph Simon Son would require its customers to provide analytical reports showing the serial number of each unit and the PCB concentration. The estimated pounds of drained electrical transformers to be processed from each of the states identified would be 1 million pounds.

b. *Decision on petition.* EPA proposes to deny the request for an exemption. EPA has determined, due to the large amounts of PCBs and the availability of an alternative option, namely reclassifying the transformers to non-PCB status, that this petition fails the unreasonable risk and good faith efforts criteria as required in TSCA section 6(e)(3)(B). EPA has found that the manufacturing, processing and distribution in commerce of PCBs and PCB Items for export in concentrations of 50 ppm or greater present an unreasonable risk of injury to health and the environment within the United States (40 CFR 761.20).

This petition requests to export a large amount, 3 million pounds, of drained PCB-Contaminated electric equipment to the Far East for salvage. EPA does not allow export of PCB-Contaminated equipment for disposal to countries that have failed to develop safe methods of PCB disposal and salvaging, and in cases where EPA has limited ability to ensure that such activities, including reuse of the salvaged material, do not present an unreasonable risk of injury to health and the environment in the United States.

The Agency has previously recognized that PCB contamination is a global problem, and that use and other activities connected with PCBs outside the United States can lead to additional PCB contamination of this country. EPA concluded in 1979 that the distribution in commerce of certain PCBs for export constitutes an unreasonable risk of injury to health and the environment in the United States (44 FR 31514, 31537, May 31, 1979) and maintains that the activities proposed by petitioner will present an unreasonable risk.

Further, in determining whether good faith efforts have been taken to develop a substitute for PCBs, EPA considers whether alternatives are available to the person requesting an exemption. In this case, there is a safer alternative available to petitioners, namely that the transformer be reclassified to non-PCB status through a drain, flush, and refill process according to 40 CFR 761.30(a)(2)(v). Such non-PCB transformers could then be exported for any purpose according to 40 CFR 761.20(b)(2). Because a readily available substitute for PCB-Contaminated equipment exists, namely decontaminated equipment, the good faith efforts criterion has not been met.

D. Processing and Distribution in Commerce

EPA received one petition requesting to process and/or distribute PCBs in commerce.

R.T. Corporation (RT Corp.). On March 31, 1989, RT Corp. requested an exemption to process and distribute in commerce analytical reference samples derived from actual waste materials. If RT Corp. obtains such an exemption, use of such samples is banned unless authorized by rule. EPA proposes such a use authorization in Unit VI. of this preamble.

a. *Current petition.* RT Corp. blends samples of pure PCBs in various matrices duplicating real world

laboratory situations. These samples provide EPA, contract labs, and other facilities with interlaboratory comparability and access to real world references. RT Corp. maintains that these procedures would be done under controlled conditions by trained and experienced personnel using practices that are designed to minimize human and environmental exposure to hazardous substances. An estimated annual amount of approximately .5 pound of PCB samples would be distributed in commerce to environmental analytical laboratories in small quantities for in-house Quality Assurance/Quality Control programs by Federal, State and municipal governments, and other clients wanting to ensure the accuracy of their analytical results.

These reference samples, which average 50 grams in weight, would be blended to homogeneity, packaged into 10 to 50 gram aliquots, and then marketed exclusively to laboratories. The total estimated annual amount of PCB-Contaminated material at <500 ppm concentration levels to be allowed under the exemption would be between 500 to 1,000 pounds. This equates to approximately .5 pound of pure PCBs. The values of the analytes of interest are determined by a round robin analysis by as many laboratories as necessary to attain a 95 percent level of confidence.

RT Corp. maintains that these samples would be shipped in accordance with all DOT shipping requirements and that they would be packaged in hermetically sealed containers bearing the PCB warning label. Once the PCBs are distributed in commerce, the risk of exposure to humans and the environment would be minimized by the small quantities of PCBs used in most applications, by the matrix containing the PCBs, and by the careful handling procedures typical of laboratory work.

b. Decision on petition. EPA has determined to grant the RT Corp. petition. EPA believes that, due to the small quantities of PCBs for analysis in these reference samples as well as the careful handling of the PCBs by trained personnel, there is no unreasonable risk presented by granting this exemption petition request. The good faith efforts criterion has been met because there are no substitutes for the "real world" waste samples of PCB material associated with this activity. RT Corp. must comply with all TSCA, Federal, State, and local laws governing the handling of these samples. In addition, once the use of the samples is complete, all of the disposal requirements contained in 40 CFR part 761 apply.

RT Corp. is prohibited from distributing in commerce PCBs in excess of the amounts and quantities specified in this petition and would be required to petition EPA to increase the quantity or change the manner of handling PCBs under the RT Corp. exemption. EPA would consider any such change a new exemption petition and address the request by rulemaking. If RT Corp. wishes to continue its process and distribution activities beyond the 1-year timeframe, according to the EPA approved exemption, a certified letter, pursuant to the amendment for the Interim Procedural Rules addressed in this rule, must be submitted at least 6 months prior to the expiration of the exemption.

VI. Use Authorization for Analytical Reference Samples Derived From Waste Materials

EPA proposes to grant a use authorization for analytical reference samples derived from waste materials when the samples have been processed and distributed in commerce pursuant to an exemption granted under TSCA section 6(e)(3)(B). As discussed above, EPA has already granted an authorization for the use of PCBs in small quantities for research and development (40 CFR 761.30(j)). Also discussed above are the reasons EPA is proposing to grant an exemption for analytical reference samples derived from waste materials. These samples do not fit the definition for the use authorization granted under 40 CFR 761.30(j), and therefore, use of these samples requires an authorization.

EPA has determined to authorize the use of PCB analytical reference samples derived from waste materials when the samples have been processed and distributed in commerce pursuant to an exemption granted under TSCA section 6(e)(3)(B). EPA has determined that the use of such samples will not present an unreasonable risk of injury to health or the environment because such samples will be handled by laboratories that have established procedures for handling hazardous materials. Further, EPA has determined that the use of such samples will further efforts to implement, comply with, and enforce the requirements for PCBs under TSCA. Once the use of such samples is over, persons who have used the samples are subject to any Federal, State, and local law governing the disposal of the PCBs, including the rules found in 40 CFR part 761.

VII. Informal Hearing

If requested, an informal hearing will be held in Washington, DC. All requests to participate in the hearing must include an outline of the topic(s) to be addressed, the amount of time requested for the opening statement, and a non-binding list of participants. The informal hearing is meant to provide an opportunity for interested persons to present additional information or to discuss new issues, not to repeat information already presented in written comments.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule would not be a "major rule" as that term is defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets. This rule would allow the manufacture, processing and distribution in commerce, and export of PCBs that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners who met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for PCB Exemptions.

This rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the rule on small business entities. Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant

economic impact on a substantial number of small entities."

EPA has tried to estimate the cost of this proposed rule on the small businesses whose petitions EPA has denied. For purposes of this regulatory flexibility analysis, EPA considers a small business to be one whose annual sales revenues were less than $40 million. This cutoff is in accordance with EPA's definition of a small business for purposes of reporting under section 8(a) of TSCA, which was published in the Federal Register of November 16, 1984 (49 FR 45430).

In accordance with section 605(b) of the Act, EPA certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small business entities. In addition, EPA is sending a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration.

EPA further notes that section 606 of the Act states that the requirements of section 603 do not alter in any manner standards otherwise applicable by law to Agency action. Current law, section 6(e)(3)(A) of TSCA and EPA's PCB Ban Rule, 40 CFR part 761, prohibits the manufacture, processing, and distribution in commerce of PCBs. This rule, under section 6(e)(3)(B) of TSCA, would exempt persons from these prohibitions where petitioners have demonstrated that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that they have made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically desirable policy to grant an exemption petition for a small business, it could do so only if the small business met the requirements set forth in TSCA. This rule would not add to the burden placed on small businesses, it would only relieve the burden placed on business through granting an exemption.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. Under OMB Control Number 2070-0021, OMB has approved a general information collection request submitted by EPA for purposes of collecting information for rulemakings on PCB exemption petitions, and for any recordkeeping or reporting conditions to PCB exemption petitions granted by EPA.

Public reporting burden for this collection of information is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Attention EPA Desk Officer, Office of Management and Budget, Washington, DC 20503.

IX. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted and filed in dockets number OPTS-66001, 66002, 66008-66008K (manufacturing, processing, and distribution in commerce exemptions) is being consolidated into this docket number OPPTS-66011. This proposed rule is a continuation of that docket under OPTS-66008K.

Public comments, the transcript of the informal hearing, if conducted, and submissions made at the informal hearing or in connection with it, will not be listed because these documents are exempt from Federal Register listing under TSCA section 19(a)(3). A full list of these materials are cited in the Index to the Rulemaking Record for Polychlorinated Biphenyls, Manufacturing, Processing, and Distribution in Commerce; Exemptions, Docket Number OPPTS 66011 at A2-File (February 20, 1992), and will be available in the TSCA Public Docket Office. The location of the TSCA Public Docket Office is listed under the "ADDRESSES" section of this rule.

List of Subjects in 40 CFR Parts 750 and 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: February 20, 1992.

Mark A. Greenwood,
Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I, subchapter E is proposed to be amended as follows:

1. In part 750:

PART 750—[AMENDED]

a. The authority citation for part 750 continues to read as follows:

Authority: 15 U.S.C. 2605.

b. In § 750.11 by removing paragraph (b), by redesignating paragraphs (c) and (d) paragraphs (b) and (c), respectively, and by adding new paragraphs (d) and (e) to read as follows:

§ 750.11 Filing of petitions for exemption.

* * * * *

(d) *Further information.* EPA reserves the right to request further information as to each petition prior to or after publication of the notice of proposed rulemaking required by § 750.13.

(e) *Renewal requests.* (1) As of [the effective date of this final rule] any petitioner who has been granted an exemption, under section 6(e)(3)(B) of TSCA, in this rule or in any subsequent rule and who seeks to extend that exemption, must submit a certified letter to EPA requesting that the exemption be granted for the following year. This letter must verify that the type of activities, the procedures for handling the PCBs, or any other aspect of the exemption have not changed and that the amount of PCBs handled has not increased from the original exemption petition request. This letter must be sent to EPA at least 6 months prior to the anniversary of the expiration of the original exemption. If a petitioner fails to make a timely submission under these rules, the exemption will expire 1 year from the effective date of granting the exemption.

(2) Any petitioner who has been granted an exemption in a prior rule, in this current rule, or in a subsequent exemption rule, and who has increased the amount of PCBs handled or who has deviated in any manner from their original petition will be required to submit a new exemption petition to EPA. The activities granted by the original exemption must not exceed the limits originally approved by EPA until the new submission is addressed by rulemaking.

§§ 750.13 and 750.14 [Amended]

c. In § § 750.13 and 750.14 change the reference "§ 750.11(d)" to read "§ 750.11(c)".

d. Section 750.31 is amended by removing paragraph (b), by redesignating paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d), respectively, and by adding a new paragraph (e) to read as follows:

§ 750.31 Filing of petitions for exemption.

* * * * *

(e) *Renewal requests.* (1) As of [insert the effective date of this final rule] any petitioner who has been granted an exemption, under section 6(e)(3)(B) of TSCA, in this rule or in any subsequent rule and who seeks to extend that exemption, must submit a certified letter to EPA requesting that the exemption be granted for the following year. This letter must verify that the type of activities, the procedures for handling the PCBs, or any other aspect of the exemption have not changed and that the amount of PCBs handled has not increased from the original exemption petition request. This letter must be sent to EPA at least 6 months prior to the anniversary of the expiration of the original exemption. If a petitioner fails to make a timely submission under these rules, the exemption will expire 1 year from the effective date of granting the exemption.

(2) Any petitioner who has been granted an exemption in a prior rule, in this current rule, or in a subsequent exemption rule, and who has increased the amount of PCBs handled or who has deviated in any manner from their original petition will be required to submit a new exemption petition and will not be subject to extension through submission of a certified letter. The activities granted by the original exemption must not exceed the limits originally approved by EPA until the new submission is addressed by rulemaking.

§§ 750.33 and 750.34 [Amended]

e. In § § 750.33(a) and 750.34(a)(1) change "§ 750.31(d)" to read "§ 750.31(c)."

2. In part 761:

PART 761—[AMENDED]

a. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

b. In § 761.30 by adding paragraph (p) to read as follows:

§ 761.30 Authorizations.

* * * * *

(p) *Analytical reference samples.* PCBs in analytical reference samples derived from waste materials may be used only when the samples originated from a person who has been granted an exemption to process and distribute in commerce such samples under TSCA section 6(e)(3)(B). Once the use of such samples is completed, disposal of such samples is governed by all applicable Federal, State, and local laws, including the rules contained in this part.

* * * * *

c. In § 761.80 by adding paragraphs (c)(2) and (m)(7) and by revising paragraphs (h) and (n) to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(c) * * *

(2) ManTech, Research Triangle Park, NC 27709.

* * * * *

(h) The Administrator grants the following petitioner(s) an exemption for 1 year to process and distribute in commerce PCBs for analytical reference samples derived from actual waste materials:

(1) R.T. Corporation, Laramie, WY 82070.

(2) [Reserved]

* * * * *

(m) * * *

(7) Restek Corporation, Bellefonte, PA. 16823

(n) The 1–year exemption granted to petitioners in paragraphs (a) through (f), and (m)(1) through (m)(6) of this section shall be renewed automatically as long as there is no increase in the amount of PCBs to be processed and distributed, imported (manufactured), or exported, nor any change in the manner of processing and distributing, importing (manufacturing), or exporting of PCBs. If, however, there is such a change, a new exemption petition must be submitted to EPA and it will be addressed in the next exemption rulemaking. In such a case, the activities granted under the original exemption may continue only until the anniversary of the effective date of the original final exemption rule granting the petition. The 1–year exemption granted to petitioners in paragraphs (c)(2), (h) and (m)(7) of this section shall be extended only if a certified letter is submitted to EPA by the petitioner according to § 750.30(e) of this chapter and until EPA acts on the information by rulemaking. The petitioner will be allowed to continue the activities for which it requests the exemption, but is prohibited from exceeding the amounts or modifying the PCB process as described in the initial petition. If a petitioner submits a certified letter requesting to renew the exemption for another year and if there is any increase in the amount of PCBs to be processed and distributed, imported (manufactured), or exported, or if there is any change in the manner of processing and distributing, importing (manufacturing), or exporting of PCBs, the certified letter shall be accompanied by a new exemption petition which will be addressed in the next exemption rulemaking. In such a case, the activities granted under the original exemption may continue only until the anniversary date of the original exemption petition being granted. Also, if the certified letter to extend the activities is not submitted in a timely fashion according to § 750.11(e) or § 750.31(e) of this chapter, as appropriate, all exempted activities shall cease on the expiration date and the letter will be considered a new petition which will be addressed during the next exemption rulemaking.

* * * * *

[FR Doc. 92–4780 Filed 2–28–92; 8:45 am]

BILLING CODE 6560–50–F

NATIONAL SCIENCE FOUNDATION

45 CFR Part 641

Environmental Assessment Procedures for Proposed National Science Foundation Actions in Antarctica

AGENCY: National Science Foundation.

ACTION: Proposed rule.

SUMMARY: The National Science Foundation (NSF) proposes to issue regulations that provide procedures for implementing (i) Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (Executive Order) as it applies to NSF's activities in Antarctica, and (ii) the environmental assessment requirements of the Protocol on Environmental Protection to the Antarctic Treaty and its related annexes, adopted by the fourth session of the Eleventh Special Antarctic Treaty Consultative Meeting (SCM XI) on October 4, 1991, and signed by the United States on that date. The procedures require environmental assessment of proposed U.S. Antarctic Program (USAP) actions so that responsible agency officials may consider the potential environmental effects of those proposed actions.

DATES: Comments must be received on or before April 1, 1992.

ADDRESSES: Interested persons may submit written comments to Lawrence Rudolph, Deputy General Counsel, Office of the General Counsel, National Science Foundation, 1800 G Street, NW., room 501, Washington, DC 20550, or hand deliver comments to the same address between the hours of 9 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lawrence Rudolph, Deputy General Counsel, or Miriam Leder, Assistant General Counsel, (202) 357–9435; or Dr. Sidney Draggan, Environmental Officer, Division of Polar Programs, (202) 357–7766, National Science Foundation, at the above address.

SUPPLEMENTARY INFORMATION: The United States first established year-round research stations in Antarctica in 1957–1958. At that time, NSF was given responsibility for the U.S. Antarctic research program, and was later given overall management responsibility for the USAP. Currently, NSF manages the research program, plans logistics and operations support for the USAP, and oversees implementation of this support by a civilian contractor and by other government agencies (i.e., the Naval Support Force Antarctica and the U.S. Coast Guard).

NSF's primary statutory function is to support scientific research, and Antarctica's relatively pristine environment provides an unmatched natural laboratory for much of this research. NSF is committed to the environmental protection of Antarctica, and environmental assessment constitutes a vital component of its antarctic environmental management and protection activities.

On July 10, 1990, NSF published a proposed rule in the **Federal Register** entitled "Procedures for Implementing Executive Order 12114, Environmental Effects Abroad of Major Federal Actions." That proposed rule set forth procedures for environmental assessments of USAP activities, and NSF received comments on that rule from several agencies, organizations and individuals.

Before the proposed rule was issued as a final regulation, the Antarctic Treaty Parties met several times to discuss and eventually adopt the Protocol on Environmental Protection to the Antarctic Treaty and its related annexes. Annex I of the Protocol contains specific procedures for environmental assessment of antarctic activities. NSF's proposed assessment procedures have now been substantially revised to implement the environmental assessment provisions of the Protocol to the extent they apply to USAP activities, and to take into account the comments received on its earlier proposed rule. To the extent any commenters on the earlier proposed rule do not feel that their comments are adequately addressed in these proposed assessment procedures, such commenters are invited to resubmit their comments so that they may be considered by NSF prior to the issuance of final assessment procedures.

As required by the Executive Order, NSF consulted with the Department of State and the Council on Environmental Quality prior to preparing this notice.

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation, and that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 641

Antarctica, Environmental assessment.

Pursuant to the authority granted by the Executive Order, NSF is proposing to add a new part 641 to title 45 of the Code of Federal Regulations, as set forth below:

Dated: February 24, 1992.

Walter E. Massey,

Director.

PART 641—ENVIRONMENTAL ASSESSMENT PROCEDURES FOR PROPOSED NATIONAL SCIENCE FOUNDATION ACTIONS IN ANTARCTICA

Sec.

Authority: E.O. 12114, 44 FR 1957, 3 CFR 1979 Comp., p. 356.

§ 641.10 Purpose.

These procedures are designed to elicit and evaluate information that will inform the National Science Foundation (NSF) of the potential environmental consequences of proposed U.S. Antarctic Program (USAP) actions, so that relevant environmental considerations are taken into account by decisionmakers before reaching final decisions on whether or how to proceed with proposed actions. These procedures are consistent with and implement the requirements of:

(1) Executive Order 12114 as it relates to NSF's antarctic activities, and

(2) The environmental assessment provisions of the Protocol on Environmental Protection to the Antarctic Treaty.

§ 641.11 Policy.

It is the policy of NSF to use all practicable means, consistent with its authority and available resources, to ensure that potential environmental effects of actions undertaken by NSF in Antarctica are appropriately identified and considered during the decisionmaking process, and that appropriate environmental safeguards are adopted so as to limit, mitigate or prevent adverse impacts on the antarctic environment.

§ 641.12 Applicability.

The requirements set forth in this part apply to all proposed projects, programs and actions authorized or approved by NSF that may have at least a minor or transitory impact on the antarctic environment.

§ 641.13 Right of action.

The procedures set forth in this part establish internal procedures to be followed by NSF in considering the potential environmental effects of actions taken in Antarctica. Nothing in this part shall be construed to create a cause of action.

§ 641.14 Definitions.

As used in these procedures, the term:

(a) *Action* means a project, program or other activity, including the adoption of an official policy or formal plan, that is undertaken, authorized, adopted or approved by NSF, the decommissioning of a physical plant or facility, and any change in the scope or intensity of a project, program or action.

(b) *Antarctica* means the area south of 60 degrees south latitude.

(c) *Antarctic environment* means the natural and physical environment of Antarctica and its dependent and associated ecosystems, but excludes social, economic and other environments.

(d) *Antarctic Treaty Consultative Meeting* means a meeting of the Parties to the Antarctic Treaty, held pursuant to Article IX(1) of the Treaty.

(e) *Comprehensive Environmental Evaluation* or *CEE* means a study of the reasonably foreseeable potential effects of a proposed action on the antarctic environment, prepared in accordance with the provisions of § 641.18. A Comprehensive Environmental Evaluation shall constitute an environmental impact statement for purposes of the Executive Order.

(f) *Environmental Action Memorandum* means a document briefly describing a proposed action and its potential impacts, if any, on the antarctic environment.

(g) *Environmental document* means an initial environmental evaluation or a comprehensive environmental evaluation.

(h) *Environmental review* means the environmental review required by the provisions of this part, and includes preliminary environmental review and preparation of an environmental document, if necessary.

(i) *Executive Order* means Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957.

(j) *Initial Environmental Evaluation* or *IEE* means a study of the reasonably foreseeable potential effects of a proposed action on the antarctic environment, prepared in accordance with the provisions of § 641.17.

(k) *Preliminary environmental review* means the environmental review described in § 641.15(a).

(l) *Protocol* means the Protocol on Environmental Protection to the Antarctic Treaty, adopted on October 4, 1991, in Madrid, at the fourth session of the Eleventh Special Antarctic Treaty Consultative Meeting and signed by the United States on that date, and all annexes thereto.

(m) *Responsible official* means the Assistant Director for Geosciences of NSF, or any NSF employee(s) designated by the Assistant Director to be principally responsible for the preparation of environmental action memoranda or environmental documents under this part.

(n) *Treaty* means the Antarctic Treaty signed in Washington, DC, on December 1, 1959, T.I.A.S No. 4780.

§ 641.15 Preliminary environmental review.

(a) The responsible official shall be notified of all actions proposed by all components of the USAP early in the general planning process, so that environmental review may be integrated into the planning and decisionmaking processes. The responsible official shall conduct a preliminary environmental review of each action, including consideration of the potential direct and reasonably foreseeable indirect effects of a proposed action on the antarctic environment.

(b) If, on the basis of the preliminary environmental review, the responsible official determines that an action will have less than a minor or transitory impact on the antarctic environment, he will prepare an Environmental Action Memorandum briefly summarizing the environmental issues considered and conclusions drawn from the review. No further environmental review shall be necessary.

§ 641.16 Preparation of environmental documents, generally.

(a) *Preparation of an environmental document.* If the responsible official determines, either initially or on the basis of a preliminary environmental review, that a proposed action may have at least a minor or transitory impact on the antarctic environment, he will prepare an environmental document in accordance with the provisions of this Part. In making this determination, the responsible official should consider whether and the degree to which the proposed action:

(1) Has the potential to adversely affect public health and safety through the environment;

(2) May have environmental effects that are likely to be highly controversial;

(3) Has highly uncertain environmental effects, or involves unique or unknown environmental risks; or

(4) Together with other actions, the effects of any one of which is individually insignificant, may have at least minor or transitory cumulative environmental effects.

(b) *Prior asessments.* Notwithstanding the provisions of § 641.16(a), if an environmental document (including a generic or programmatic CEE) or its equivalent has been prepared for a particular type of action, and that document adequately addresses the environmental effects of a proposed action of that type, a new environmental document need not be prepared. Instead, the responsible official shall prepare an Environmental Action Memorandum for the proposed action, cross-referencing the previously prepared environmental document.

(c) *Exclusions.* NSF has determined that the following actions will have less than a minor or transitory impact on the Antarctic environment, and are not subject to the procedures set forth in this Part, except to the extent provided herein:

(1) Scientific research activities involving:

(i) Low volume collection of biological or geologic specimens;

(ii) Small-scale detonation of explosives;

(iii) Use of weather/research balloons, research rockets, and automatic weather stations that are to be retrieved; and

(iv) Use of radioisotopes.

(2) Interior remodelling and renovation of existing facilities.

Notwithstanding the foregoing, if information developed during the planning of any of the actions described in this § 641.16(c) indicates the possibility that the action may have at least minor or transitory impact on the Antarctic environment, the environmental effects of the action shall be reviewed to determine the need for the preparation of an environmental document.

(d) *Coordination with other committees, offices and federal agencies.* The responsible official shall notify NSF's Committee on Environmental Matters and the Office of the General Counsel when he intends to prepare an environmental document, and will coordinate preparation of the document with those entities. Responsibility for preparation of the environmental document rests primarily with the responsible official, but he should consult with and encourage the participation of other knowledgeable individuals within NSF, and, where appropriate, with other individuals, government agencies and entities with relevant knowledge and expertise.

(e) *Type of environmental document.* The type of environmental document required under this Part depends on the nature of the proposed action under consideration. An IEE must be prepared for proposed actions which the responsible official concludes may have at least a minor transitory impact on the Antarctic environment and for which a CEE is not prepared. A CEE must be prepared if an IEE indicates, or if it is otherwise determined, that a proposed action is likely to have more than a minor or transitory impact on the antarctic environment.

(f) *Obligation of funds.* Because of logistic constraints, it may not be possible to complete the environmental review of a proposed action before funds must be committed and/or disbursed. In such cases, funds for the proposed action may be committed and/or disbursed, provided:

(1) the appropriate environmental review is completed before implementation of the proposed action in Antarctica, and

(2) implementation plans for the proposed action will be modified or canceled in light of the completed environmental review, if appropriate.

§ 641.17 Initial environmental evaluation.

(a) *Contents.* An IEE shall contain sufficient detail to assess whether a proposed action may have more than a minor or transitory impact on the antarctic environment, and shall include the following information:

(1) A description of the proposed action, including its purpose, location, duration and intensity; and

(2) Consideration of alternatives to the proposed action and any impacts that the proposed action may have on the antarctic environment, including cumulative impacts in light of existing and known planned actions and existing information on such actions.

(b) *Further environmental review.* If an IEE indicates that a proposed action is likely to have no more than a minor or transitory impact on the antarctic environment, no further environmental review of the action is necessary provided that appropriate procedures, which may include monitoring, are put in place to assess and verify the impact of the action.

(c) *Availability to public.* An annual list of IEEs and a description of any decisions taken in consequence thereof shall be provided to the Department of State for circulation to all Parties to the Protocol and to organizations or committees established pursuant to the Protocol or the Treaty, as required. The list and copies of final IEEs also shall be available to the public upon request.

§ 641.18 Comprehensive environmental evaluation.

(a) *Scoping.* If it is determined that a CEE will be prepared, the responsible official shall commence the process of identifying significant issues relating to the proposed action and determining the scope of the issues to be addressed in the CEE. Persons and government agencies having expertise relevant to the environmental aspects of the proposed action shall also participate in this process.

(b) *Contents of CEE.* A CEE shall be a concise and analytical document, prepared in accordance with the range of relevant issues identified in the scoping process. It shall contain sufficient information to permit informed consideration of the reasonably foreseeable potential environmental effects of a proposed action and the reasonable alternatives to that proposed action. Such information shall include the following:

(1) A description of the proposed action including its purpose, location, duration and intensity;

(2) A description of the initial base-line environmental state with which predicted changes are to be compared, and a prediction of the future environmental state in the absence of the proposed action;

(3) A description of the methods and data used to forecast the potential impacts of the proposed action;

(4) An estimate of the nature, extent, duration and intensity of the likely direct potential impacts of the proposed action;

(5) A consideration of the potential indirect or second order impacts from the proposed action;

(6) A consideration of potential cumulative impacts of the proposed action in light of existing activities and other known planned actions and available information on those actions;

(7) A description of all reasonable alternatives to the proposed action, including the alternative of not proceeding, and the potential consequences of those alternatives, in sufficient detail to allow a clear basis for choice among the alternatives and the proposed action;

(8) Identification of measures, including monitoring, that could be employed to minimize, mitigate or prevent potential impacts of the proposed action, detect unforeseen impacts, provide early warning of any adverse effects, and carry out prompt and effective response to accidents;

(9) Identification of unavoidable potential impacts of the proposed action.

(10) Consideration of the potential effects of the proposed action on the conduct of scientific research and on other existing uses and values;

(11) Identification of gaps in knowledge and uncertainties encountered in compiling the information required by this § 641.18(b);

(12) A non-technical summary of the information included in the CEE; and

(13) The name and address of the person and/or organization which prepared the CEE, and the address to which comments thereon should be directed.

(c) *Circulation of draft CEE.* A draft or each CEE shall be provided to the Department of State for circulation to all Parties to the Protocol and to organizations or committees established pursuant to the Protocol or Treaty, as required, and shall be made publicly available. Notice of such public availability shall be published in the **Federal Register**. All such parties shall have a period of not less than ninety (90) days within which to review and comment upon the draft CEE.

(d) *Final CEE.* A final CEE shall address, and shall include or summarize, comments received on the draft CEE. The final CEE, notice of any decisions related thereto, and any evaluation of the significance of the predicted impacts in relation to the advantages of the proposed action shall be provided to the Department of State for circulation to all parties to the Protocol, and shall be available to the public upon request, at least sixty (60) days prior to the commencement of the proposed activity in Antarctica.

(e) *Implementation of Proposed Action.* No action for which a final CEE is required shall proceed in Antarctica until after the earlier of.

(1) The first Antarctic Treaty Consultative Meeting taking place at lease one hundred and twenty days after circulation of the draft CEE, or

(2) Fifteen months following the circulation of the draft CEE.

§ 641.19 Modification of environmental documents.

The responsible official should revise or supplement an environmental document if there is a substantial change in a proposed action which may have more than a minor or transitory effect on the antarctic environment, or if there are significant new circumstances or information which may have bearing on the proposed action.

§ 641.20 Notification of availability of environmental documents and other information.

Environmental Action Memoranda, environmental documents and final data obtained under § 641.21 shall be made available to the public upon request. However, notice of such availability need not be given, except as specifically provided in this part.

§ 641.21 Monitoring.

Scientific, analytic and/or reporting procedures shall be put in place, including appropriate monitoring of key environmental indicators, to assess and verify the potential environmental impacts of actions which are the subject of a CEE. All proposed actions for which an environmental document has been prepared should include procedures to provide a regular and verifiable record of the actual impacts of those actions, in order, *inter alia*, to

(1) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(2) Provide information useful for minimizing or mitigating those impacts, and, where appropriate, information on the need for suspension, cancellation or modification of the action.

§ 641.22 Cases of emergency.

This part shall not apply to actions taken in cases of emergency relating to the safety of human life or of ships, aircraft or equipment and facilities of high value, or the protection of the environment. Notice of any such actions which would otherwise have required the preparation of a CEE shall be provided immediately to the Department

of State for circulation to all Parties to the Protocol and to committees and organizations established pursuant to the Treaty or Protocol, as required. A description of the emergency action undertaken shall also be provided to the Department of State for appropriate circulation within ninety days of the action.

[FR Doc. 92-4748 Filed 2-28-92; 8:45 am]
BILLING CODE 7555-01-M

Notices

Federal Register
Vol. 57, No. 41
Monday, March 2, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Enterprise

The Citizens' Advisory Committee on Equal Opportunity; Meeting

AGENCY: Office of Advocacy and Enterprise, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a meeting of the Citizens' Advisory Committee on Equal Opportunity. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. No. 92–463).

DATES: March 9 and 10, 1992, 9 a.m.–4:30 p.m. on the 9th and 9 a.m.–1 p.m. on the 10th.

ADDRESSES: The meeting location is at the U.S. Department of Agriculture, Williamsburg Room, 104–W, Administration Building, Washington, DC 20250. Send written statements to Steven Chang or Crystal Day, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., room 1322–S, South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Steven Chang, (202) 720–7381 or Crystal Day, (202) 720–7117.

SUPPLEMENTARY INFORMATION: The committee will receive briefings on the reorganization of the Department's Office of Equal Opportunity and of the Office of Personnel and on the Department's Succession Planning and Recruitment Plan. The committee will also elect officers for fiscal year 1992 and discuss their fiscal year 1992 agenda.

Jo Ann C. Jenkins,

Director, Office of Advocacy and Enterprise.

[FR Doc. 92–4767 Filed 2–28–92; 8:45 am]

BILLING CODE 3410–04–M

Federal Grain Inspection Service

Designation of the Quincy, Inc., (IL) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Quincy Grain Inspection & Weighing Service, Inc. (Quincy, Inc.), to provide official grain inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1991, **Federal Register** (56 FR 49740), FGIS announced that the designation of Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service terminates on March 31, 1992, and asked persons interested in providing official services within the Quincy geographic area to submit an application for designation. Applications were to be postmarked by October 31, 1991.

Anthony L. Marquardt, proposing to incorporate as Quincy Grain Inspection & Weighing Service, Inc. (Quincy, Inc.), and John H. Oliver, Inc., dba Keokuk Grain Inspection Service, the only applicants, each applied for the entire available geographic area. FGIS named and requested comments on the applicants for the Quincy area designation in the December 23, 1991, **Federal Register** (56 FR 66428). Comments were to be postmarked by January 28, 1992. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Quincy, Inc., is better able than any other applicant to provide official grain inspection in the geographic area for which they applied.

Effective April 1, 1992, and terminating March 31, 1995, Quincy, Inc., is designated to provide official grain inspection in the geographic area specified in the October **Federal Register**.

Interested persons may obtain official services by contacting Quincy, Inc., at 217-222-7592.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1992.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92–4430 Filed 2–28–92; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications From Persons Interested in Designation To Provide Official Services in the Geographic Areas Presently Assigned to the Fremont (NE) and Titus (IN) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Fremont Grain Inspection Department, Inc. (Fremont), and Titus Grain Inspection, Inc. (Titus), will end August 31, 1992, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked on or before April 1, 1992.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and

Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Fremont located at 603 East Dodge Street, Fremont, NE 68205, and Titus located at 1111 East 800 North, West Lafayette, IN 47906, to officially inspect grain under the Act on September 1, 1989.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Fremont and Titus end on August 31, 1992.

The geographic area presently assigned to Fremont, in the States of Iowa and Nebraska, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In Iowa:

Carroll (west of U.S. Route 71); Clay (west of U.S. Route 71); Crawford; Dickinson (west of U. S. Route 71); Harrison (east of State Route 183); O'Brien (north of B24 and east of U.S. Route 59); Osceola (east of U.S. Route 59); and Shelby Counties.

In Nebraska:

Bounded on the North by U.S. Route 20 east to the Pierce County line; the eastern Pierce County line; the northern Wayne, Cuming, and Burt County lines east to the Missouri River;

Bounded on the East by the Missouri River south-southeast to State Route 91; State Route 91 west to the Dodge County line; the eastern and southern Dodge County lines west to U.S. Route 77; U.S. Route 77 south to the Saunders County line;

Bounded on the South by the southern Saunders, Butler, and Polk County lines; and

Bounded on the West by the western Polk County line north to the Platte River; the Platte River northeast to the western Platte County line; the western and northern Platte County lines east to U.S. Route 81; U.S. Route 81 north to U.S. Route 20.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Juergens Produce and Seed, and Farmers Grain and Lumber Company, both in Carroll, Carroll County, Iowa (located inside Central Iowa Grain Inspection Service, Inc.'s, area); and Farmers Cooperative, and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska (located inside Omaha Grain Inspection Service, Inc.'s, area).

Exceptions to Fremont's assigned geographic area are the following locations inside Fremont's area which have been and will continue to be serviced by the following official agencies:

1. Hastings Grain Inspection, Inc.: Farmers Cooperative Grain Company, and Wagner Mills, Inc., both in Columbus, Platte County, Nebraska;

2. Omaha Grain Inspection Service, Inc.: Farmers Coop Business Assn., Rising City, Butler County, Nebraska; and Farmers Coop Business Assn., Shelby, Polk County, Nebraska.

The geographic area presently assigned to Titus, in the State of Indiana, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Pulaski County line;

Bounded on the East by the eastern and southern Pulaski County lines; the eastern White County line; the eastern Carroll County line south to State Route 25; State Route 25 southwest to Tippecanoe County; the eastern Tippecanoe County line;

Bounded on the South by the southern Tippecanoe County line; the eastern and southern Fountain County lines west to U.S. Route 41; and

Bounded on the West by U.S. Route 41 north to the northern Benton County line; the northern Benton County line east to State Route 55; State Route 55 north to U.S. Route 24; U.S. Route 24 east to the White County line; the western White and Pulaski County lines.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Boswell Grain Company, Boswell, Benton County; Dunn Grain, Dunn, Benton County; York Richland Grain Elevator, Inc., Earl Park, Benton County; Raub Grain Company, Raub, Benton County (located inside Champaign-Danville Grain Inspection Departments, Inc.'s, area); and The Andersons, Delphi, Carroll County; Buckeye Feed and Supply Company, Leiters Ford, Fulton County; andCargill, Inc., Linden, Montgomery County (located inside Frankfort Grain Inspection, Inc.'s, area).

Exceptions to Titus' assigned geographic area are the following locations inside Titus' area which have been and will continue to be serviced by the following official agency: Schneider Inspection Service, Inc.: Central Soya, and Farmers Grain, both in Winamac, Pulaski County.

Interested persons, including Fremont and Titus, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning September 1, 1992, and ending August 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1992.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92-4431 Filed 2-28-92; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Enid (OK) and Erie (OH) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Enid Grain Inspection Company, Inc. (Enid), and Dennis L. Boltenhouse dba Erie Grain Inspection Service (Erie).

DATES: Comments must be postmarked on or before April 16, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier users may send responses to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 2, 1992, **Federal Register** (57 FR 37), FGIS asked persons interested in providing official grain inspection in the Enid and Erie geographic areas to submit an application for designation. Applications were to be postmarked by February 3, 1992. Enid, and Dennis L. Boltenhouse, proposing to incorporate as Erie Grain Inspection Service, Inc. (Erie, Inc.), were the only applicants. Enid applied for the entire geographic area currently assigned to them. Erie, Inc., applied for the entire Erie geographic area.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1992.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92-4432 Filed 2-28-92; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Crown Jewel Mine, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA; Department of Ecology, Washington State.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service and the Washington State Department of Ecology will prepare an environmental impact statement (EIS) for a proposal to develop a producing mine for precious mineral extraction on Buckhorn Mountain. The Crown Jewel Mine project area is located approximately 21 miles east of Oroville, in T. 40 N., R. 30 E., WM, portions of sections 23, 24, 25 and T. 40 N., R. 31 E., portions of sections 19, 30. The proposed project is a mining operation consisting of an open pit mine, two waste rock dumps, one topsoil storage area, and numerous buildings for milling and office operations. The purpose of the EIS will be to develop and evaluate a range of alternatives for mining and related construction of roads and milling facilities. The alternatives will include a no action alternative, involving no mining or road construction, and additional alternatives to respond to issues generated during the public involvement (scoping) process. The proposed project will be in compliance with the direction in the December 1989 Okanogan National Forest Land and Resources Management Plan (Forest Plan) which provides the overall guidance for management of the area and the proposed projects for the next ten years. The agencies invite written comments on the scope of this project. In addition, the agencies give notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by March 27, 1992.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Elaine Zieroth, Project Coordinator, Tonasket Ranger District, P.O. Box 466, Tonasket, Washington 98855.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Elaine Zieroth, Project Coordinator, Tonasket Ranger District, P.O. Box 466, Tonasket, Washington, 98855 (Phone: (509) 486-2186).

SUPPLEMENTARY INFORMATION: The Forest Service and Department of Ecology proposed Crown Jewel Mine Project ("PROJECT") would consist of one open pit mine, two waste rock dumps, one topsoil storage area, and numerous buildings for milling and office operations. Approximately 600 acres will be disturbed by the project out of an approximate 1150 acres of analysis area. Approximately 65 percent of the analysis area is on National Forest System (NFS) land, 25 percent is on Bureau of Land Management land (BLM), and 10 percent is on private land. The two waste rock dumps will be designed to contain approximately 105 million tons of rock and will disturb approximately 289 acres of land. The open pit mine will disturb approximately 90 acres. The project has an estimated life of 8 to 10 years and ore production will total approximately 8 to 10 million tons. The ore will be processed on site by conventional milling operations to recover precious metals. During construction, an estimated 200 and 250 temporary workers will be employed. Approximately 130 employees will work at the project during operations. The project will require approximately 600 acre feet of water per year. Power will be supplied by the Public Utility District of Okanogan County and will require approximately 8 megawatts per year. Drilling will be performed with track or truck-mounted blast hole drills. It is anticipated that ammonium nitrate/fuel oil will be the primary blasting agent. The mill facilities will be located adjacent to the mine and will process the ore using a modified conventional circuit which will be tailored to the specific characteristics of the Crown Jewel ore. The primary crushing circuit will be constructed adjacent to the pit and the griniding will take place in ball mills. All grinding activities occur inside of the mill building. Environmental analyses and measures will include reclamation, employee environmental education, spill prevention/emergency response planning, water quality monitoring of both surface and ground water, erosion and sediment control, air quality, wildlife protection and public safety. The slurry or tailings, which is comprised of dilute cyanide solution and solids, is proposed to be detoxified in the mill facility and piped to an engineer-designed disposal facility.

A number of issues have been identified to date. The major issues concern water quality and quantity, wildlife habitat, increased traffic, radioactivity, the use of toxic material for mineral extraction, potential spills, effects on the visual quality of the area, and potential Wild and Scenic Rivers.

This EIS will tier to the final EIS for the Forest Plan. The Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, and desired future conditions for the various lands on the Forest. This direction is provided for management practices that will be utilized during the implementation of the Forest Plan.

The Crown Jewel Mine Analysis Area contains about 1150 acres. The Analysis Area is allocated to the following Management Areas (MA):

—Approximately 17 percent of the NFS land is in MA 14 which is designed to provide wildlife diversity including deer winter range while producing merchantable wood fiber.
—Approximately 83 percent NFS land is in MA 25 which is designed to provide intensive timber and range management opportunities. This project will be in consistent with the Forest Plan although some alternatives may incorporate a Forest plan amendment.

The analysis will evaluate a range of alternatives. Alternatives to be evaluated range from no-action, with no mining or road construction to alternatives that fully develop the mineral and milling facilities.

Public participation will be especially important at several points during the analysis. The participating agencies will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribes, and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the Draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (e.g. newsletters, correspondence, etc.).

The Forest Service and the Washington State Department of Ecology will be joint lead agencies, in accordance with 40 CFR 1501.5(b), and are responsible for the preparation of the EIS. The USDI, Bureau of Land Management, and the Washington State Department of Natural Resources will be cooperating agencies in accordance with 40 CFR 1501.6.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1992. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. It is very important that those interested in the management of the Okanogan National Forest participate at that time.

To assist the participating agencies in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The participating agencies believe it is important to give reviewers notice of this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the participating agencies at a time when it can meaningfully be considered and responded to in the final EIS.

The final EIS is scheduled to be completed by March, 1993. In the final EIS, the participating agencies are required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Sam Gehr, Forest Supervisor, Okanogan National Forest, is the responsible official, and will make the decision regarding this proposal. As the responsible official he will document the decision and reasons for the decision in the Record of Decision.

That decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: February 20, 1992

Don Lyon,

Acting Forest Supervisor.

[FR Doc. 92-4707 Filed 2-28-92; 8:45 am]

BILLING CODE 3410-11-M

Bohemia Mountain Timber Sale; Stikine Area, Tongass National Forest, Petersburg, Alaska; Intent To Prepare a Supplemental Environmental Impact Statement

On January 22, 1990 (55 FR 2123), a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Bohemia Mountain Timber Sale was published in the **Federal Register**. A Record of Decision (ROD) was signed on September 30, 1991, to implement Alternative 5 of the Final Environmental Impact Statement for the Bohemia Mountain Timber Sale. The ROD was appealed and a Notice of Withdrawal of the Record of Decision was signed by Laura Nelson, Acting Forest Supervisor, on December 20, 1991.

This Notice of Intent (NOI) revises the previous NOI published in the **Federal Register** on January 22, 1990, to include a reanalysis of existing alternatives and issues. The Tongass Land Management Plan Revision Draft EIS evaluated rivers on the Tongass National Forest and found 112 revers tentatively eligible for further consideration as potential additions to the National Wild and Scenic River System. Duncan Salt Chuck Creek was determined to be eligible. The suitability phase of analysis for Duncan Salt Chuck Creek will occur in the Forest Plan Revision so it is considered within the context of all rivers on the Tongass National Forest.

The decisions required to be made are: 1) How and where should timber sales be scheduled in the immediate future to best address the issues and concerns identified as a result of ongoing scoping, and 2) Where and how should resource constraints suggested by the Tongass Land Management Plan (TLMP) land allocation be site specifically identified?

During the analysis the ID Team will explore opportunities to schedule volume ranging from 10 MMBF to 50 MMBF for harvest during the first entry.

Scoping has occurred throughout the planning process. Federal, State, and local agencies; potential contractors; and other individuals or organizations who may be interested in, or affected by

the decision are invited to participate in the scoping process.

The comment period on the Draft Supplemental EIS will be 45 days from the date on which notice of availability of the Draft Supplemental EIS is published in the Federal Register. It is very important that those interested in these proposed activities participate at that time. To be most helpful, comments on the Draft Supplemental EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed.

In addition, Federal court decisions have established that reviewers of Draft EISs must structure their participation so that it is meaningful and alerts an agency to the reviewer's position and contentions. Environmental objections that could have been raised at the Draft stage may be waived if not raised until after completion of the Final EIS. The reason for this is so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

This reanalysis will take approximately six additional months to complete. The Draft Supplemental EIS should be available for public review by April 1, 1992. The Final Supplemental EIS is scheduled for completing in July 1992.

Abigail R. Kimbell, Forest Supervisor, Stikine Area, Tongass National Forest, is the responsible official.

Written comments and suggestions concerning the analysis and Supplemental Environmental Impact Statement should be sent to Tammy Malone, ID team Leader, Supervisor's Office, Stikine Area, Tongass National Forest, P.O. Box 309, Petersburg, Alaska, 99833, phone (907) 772-3841.

Dated: February 8, 1992.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 92-4740 Filed 2-28-92; 8:45 am]

BILLING CODE 3410-11-M

Oil and Gas Leasing, Umatilla and Malheur National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

In the matter of Umatilla National Forest, Asotin, Columbia, Garfield, and Walla Walla Counties, WA; Baker, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties, OR; Malheur National Forest, Grant, Harney, Baker, and Malheur Counties, OR.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposal to identify Umatilla and Malheur National Forest lands that would be available for oil and gas leasing. An interest in these lands has been expressed by the oil and gas industry. Under the Federal Onshore Oil and Gas Leasing Reform Act of 1987 and 36 CFR Part 228 regulations, the Forest Service authorizes the Bureau of Land Management (BLM) to offer National Forest System lands for oil and gas leasing. The decision to authorize leasing will be made in a two-part analysis process. The first part identifies the lands that are administratively available for leasing and under which stipulation, if any. The second part authorizes the BLM to offer leases for specific lands. Both the administratively available decision, and the leasing decision for specific lands, are being made through this document. The BLM may offer the specific lands for lease subject to the Forest Service ensuring that correct stipulations will be attached to leases issued by BLM. Except where stipulations prohibits all surface use, operations and development may be allowed on the leased lands.

Such activity is subject to the operator obtaining an approved Surface Use Plan of Operations from the Forest Service in accordance with 36 CFR subpart E, 228.106 and 228.107.

DATES: Comments concerning the scope of the analysis should be received in writing by March 31, 1992.

ADDRESSES: Send written comments to Umatilla National Forest 2517 SW. Hailey Ave., Pendleton, OR 97801.

FOR FURTHER INFORMATION CONTACT: Russell Betts, Recreation, Lands and Minerals Program Manager, phone (503) 276-3811.

SUPPLEMENTARY INFORMATION: The Umatilla and Malheur National Forests propose to identify lands under their jurisdiction that are available for oil and gas leasing. The decisions reached through this analysis will meet Forest Plan standards and guidelines and may result in an amendment to the Umatilla and Malheur National Forest Land and Resource Management Plans. The Regional Forester will then notify the BLM as to which lands are available for leasing.

The EIS will address the environmental effects of leasing in the various management areas defined in the Umatilla and Malheur National Forest Land and Resources Management Plans that were approved in June and May, 1990, respectively. The scope of the EIS will be confined to those issues of oil and gas leasing and will not address the land allocations that were made in the Forest Plans. Classified wildernesses are legally excluded from leasing.

Each Management Area will be map identified and placed in one of the following categories: (1) Lands which are legally unavailable for leasing; (2) Lands which are administratively unavailable for leasing; (3) Lands which are open to oil gas leasing subject to the terms and conditions of the standard oil and gas lease form; and (4) Lands which are open to oil and gas leasing but subject to stipulations that would prohibit surface use on areas larger than 40 acres or that would delay surface activities for more than 60 days.

Separate maps will be provided to show where the various stipulations would apply. Narratives will state why stipulations are considered necessary and how they contribute toward achieving multiple use goals in a cost-effective manner.

Riparian area disturbance, visual impacts, and social and economic impacts have been identified as preliminary issues. This list of issues will be verified, expanded, or modified based on public scoping for this proposal.

This EIS will be based on the type and amount of post-leasing activity that is reasonably foreseeable within the next 10 years. Under an interagency agreement between the Forest Service and the BLM, the BLM has assessed the potential for oil and gas occurrence and established a reasonably foreseeable development scenario for the Umatilla and Malheur National Forests. The BLM estimates that one to three exploratory wells will be drilled during the next ten years. Each exploratory well would require two to six acres for a well pad and an average of one-quarter mile of access road. The estimated success rate for these wells would be no more that 10 percent. No field development is expected to occur in the next 10 years.

Public participation will be especially important at several points during the analysis. No public scoping meetings are planned but through a letter the Forest Service will be seeking information from Federal, State, and local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues;
2. Identifying issues to be analyzed in depth;
3. Eliminating insignificant issues or those which have been covered by the Forest Land and Resource Management Plans Final EIS;

4. Developing alternatives;

5. Identifying potential environmental effects of the alternatives (i.e. direct, indirect and cumulative effects and connected actions); and

6. Determining potential cooperating agencies and task assignments.

The following alternatives have been identified: (1) No action alternative (closed to leasing); (2) Open to development and subject only to the terms and conditions of the standard lease form; and (3) Open to development but subject to lease stipulations to protect other resources. Additional alternatives may be developed during the scoping or analysis processes.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by January, 1993. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The USDA Forest Service is the lead agency for this proposal and the USDI Bureau of Land Management is the cooperating agency.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by July, 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the review period. Jeff D. Blackwood and Mark A. Boche, Forest Supervisors, Umatilla and Malheur National Forests, respectively, are the responsible officials. As the responsible officials, they will document the decisions and reasons for the decisions in the Records of Decision. The decisions will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: February 4, 1992.

Lyle E. Jensen,

Planning Staff, Umatilla National Forest.

Dated: February 13, 1992.

Mark A. Boche,

Forest Supervisor, Malheur National Forest.

[FR Doc. 92-4708 Filed 2-28-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Antifriction Bearing Industry.

Form Number: Ref. #76; Defense Production Act of 1950, Section 705.

OMB Approval Number: N/A.

Type of Request: New Collection.

Burden: 788 reporting/recordkeeping hours.

Number of Respondents: 113.

Avg Hours Per Response: Ranges between 4 and 12 hours depending on size of firm.

Needs and Uses: Information will be collected from Antifriction bearing firms in the defense subcontractor base to assess Defense procurement policy and related economic analysis. The purpose of the collection is to evaluate the Defense Federal Acquisition Regulation requiring domestic manufacture of defense procured bearings.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: One-time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Gary Waxman, (202) 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC, 20503.

Dated: February 28, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-4791 Filed 2-28-92; 8:45 am]

BILLING CODE 3510-CW

Bureau of the Census

[Docket No. 920249-2049]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs the 1991 annual retail trade data to provide a sound statistical basis for the formation of policy by various government agencies. These data also serve a variety of public and business needs. This annual survey is a continuation of similar surveys that we have conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases of merchandise, accounts receivable balances, and year end inventories for 1990 and 1991. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 763-5294.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take

surveys necessary to furnish current data on the subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between Economic Censuses.

The next Economic Census will be conducted for 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the Economic Census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1991 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within 30 days after receipt.

This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0013. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

CONCLUSION: Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: February 24, 1992.

Bryant Benton,

Acting Director, Bureau of the Census.

[FR Doc. 92–4674 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–07–M

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Abco Tool & Die, Inc.	11 Thornton Drive, Hyannis, MA 02601.	01/21/92	Custom plastic molds made from steel used by plastic companies.
Beall Manufacturing.	P.O. Box 70, East Alton, IL 62024.	02/03/92	Sweeps and points, cultivating equipment parts and lock and track washers.
Seymour Frank General Woodworking, Inc.	135 Essex Avenue East, Avenel, NJ 07001.	02/04/92	High pressure laminated office furniture.
Phoenix Products, Inc.	207 North Broadway/Box 109, Berea, KY 40403.	02/06/92	Kayaks.
Delaware Diamond Knives, Inc.	3825 Lancaster Pike, Wilmington, DE 19805.	02/07/92	Diamond ultramicrotomy knives.
F.P. Rosback Company.	125 Hawthorne Avenue, St. Joseph, MI 49085.	02/07/92	Book binding machinery.
Karnik and Ayda Bargrian D/B/A/ Western Sewing.	4551 San Fernando Road, #104, Glendale, CA 91204.	02/07/92	Women's dresses, shirts, skirts and shorts.
Basil-Walker Tool Company, Inc.	623 Young Street, Tonawanda, NY 14150.	02/12/92	Injection type molds for rubber or plastic and molds, nesoi, for metal.
Berkliff Corporation.	180 Madison Avenue, New York, NY 10016.	02/12/92	Adult running shorts, women's gowns, panties tops and bottoms.
Hyman Brickle & Son, Inc.	235 Singleton Street, Woonsocket, RI 028955.	02/12/92	Blended wool fibers and blended wool blankets.
Moot Wood Turnings, Inc.	Mill Street, Box 300, Northfield, VT 05664.	02/12/92	Baseball bats, furniture products, household products, gavels, billy clubs, and wood toys.
Exolon-Esk Company.	1000 East Niagara Street, Box 590, Tonawanda, NY 14151–0590.	02/14/92	Aluminum oxide, silicon carbide, and fused magnesium.
Ling Electronics, Inc.	4890 E. La Palma Avenue, Box 6177C, Anaheim, CA 92806.	02/14/92	Vibration test equipment.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 4015A, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted in 11.313, Trade Adjustment Assistance.

Dated: February 25, 1992.

Steven R. Brennen,

Acting Deputy Assistant Secretary for Program Operations.

[FR Doc. 92–4750 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Order No. 562 (FTZ Docket 39–91)]

Temporary Extension of Authority Foreign-Trade Subzone 23B CPS (Formerly Greater Buffalo Press) Ink Plant Chautauqua Co., NY

Pursuant to the authority granted in the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, in 1986, the Foreign-Trade Zones Board (the Board) granted authority to the County of Erie, New York, to establish Foreign-Trade Subzone 23B at the ink manufacturing facilities of CPS division of Greater Buffalo Press, Inc. (GBP), Chautauqua County, New York, for a period of 5 years, subject to extension, and subject to restrictions requiring the election of privileged foreign status (19 CFR 146.41) on pigments used in the production of ink sold to domestic printing plants not affiliated with GBP and on ink produced in excess of 21 million pounds annually (Board Order 332, 56 FR 18468, 5/20/86);

Whereas, the ink manufacturing facilities of GBP were sold and are now owned and operated by CPS Corporation, a subsidiary of INX International, Inc.;

Whereas, on July 2, 1991, the County of Erie made application to the Board for an indefinite extension of authority for Subzone 23B;

Whereas, the Board has commenced a review and temporarily extended authority for the subzone to February 25, 1992 (56 FR 42309, 8/27/91), pending completion of the review;

Whereas, the review of the request for an indefinite extension is still underway and will not be completed by the February 25, 1992, expiration date; and,

Whereas, the FTZ Staff has recommended that a further extension of authority would be in the public interest pending completion of the review;

Now, Therefore, The Board hereby orders:

That subzone status for SZ 23B is further extended temporarily to December 31, 1992, subject to all of the other conditions in Board Order 332, pending completion of the review of the application (FTZ Docket 39–91) for an indefinite time extension.

Signed at Washington, DC, this 25th day of February 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Executive Secretary.

[FR Doc. 92–4792 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–602–039]

Canned Bartlett Pears From Australia; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on canned bartlett pears from Australia. Interested parties who object to this revocation must submit their comments in writing no later than March 31, 1992

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: David Levy or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–4851.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1973, the Department of Treasury published an antidumping finding on canned bartlett pears from Australia (38 FR 7566). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than March 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1992, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 25, 1992.

Roland L. McDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92–4793 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–002]

Chloropicrin From the People's Republic of China; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on chloropicrin from the People's Republic of China. Interested parties who object to this revocation must submit their comments in writing no later than March 31, 1992.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published an antidumping duty order on chloropicrin from the People's Republic of China (49 FR 10691). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it

is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than March 31, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1992, we shall conclude that the antidumping duty order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 25, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-4794 Filed 2-28-92; 8:45 am]

BILLING CODE 3510-DS-M

Brookhaven National Laboratory, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-073R. *Applicant:* Brookhaven National Laboratory, Upton, NY 11973. *Instrument:* Photoelectron Spectrometer. *Manufacturer:* VSW, United Kingdom. *Intended Use:* See notice at 56 FR 25412, June 4, 1991. *Reasons:* The foreign instrument provides an angular resolved analyzer which can rotate horizontally and vertically around the sample specimen with an angular resolution of 2°. *Advice Submitted By:* National Institute of Standards and Technology, January 29, 1992.

Docket Number: 91-140. *Applicant:* Laser Medical Research Foundation, Columbus, OH 43215. *Instrument:* Laser. *Manufacturer:* Scientific Research and Manufacturing Corporation, CIS. *Intended Use:* See notice at 56 FR 51880, October 16, 1991. *Reasons:* The foreign instrument provides: (1) An electron beam pumped laser, (2) output of 5.0 W cw at 630 nm, (3) a raster scan resolution of 1000 × 1000 pixels and (4) a scan rate of 60 to 100 frames per second. *Advice Submitted By:* National Institutes of Health, January 14, 1992.

Docket Number: 91-175. *Applicant:* Oregon State University, Corvallis, OR 97331-5503. *Instrument:* Deep Ocean Particle Sampler. *Manufacturer:* Challenger Oceanic Systems and Services, United Kingdom. *Intended Use:* See notice at 57 FR 399, January 6, 1992. *Reasons:* The foreign instrument provides programmable in situ filtration and capture of particles in water columns with a flow rate to 1200 liters of water per hour to a depth of more than 5000m. *Advice Received From:* The National Ocean Service, February 4, 1992.

Docket Number: 91-178. *Applicant:* Research Foundation, State University of New York, Stony Brook, NY 11794. *Instrument:* Tandem Fabry-Perot Interferometer. *Manufacturer:* J.R. Sandercock, Switzerland. *Intended Use:* See notice at 57 FR 400, January 6, 1992. *Reasons:* The foreign instrument provides a 3-pass dynamically isolated tandem system with contrast in the range 10^9 to 10^{11} and optimal dynamic range with minimal drift. *Advice Received From:* National Institute of Standards and Technology, February 3, 1992.

The National Institute of Standards and Technology, National Institutes of Health and National Ocean Service advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-4795 Filed 2-28-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 30 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-012. *Applicant:* Howard Hughes Medical Institute, Center for Neural Science, New York University, 4 Washington Place, room 809, New York, NY 10003. *Instrument:* Special Purpose Manipulator, Model MK2. *Manufacturer:* A.J. Neuro-Institute, United Kingdom. *Intended Use:* The instrument will be used in research which concerns the function and development of the visual system, especially the visual areas of the primate cerebral cortex. The main experimental tools are electrophysiological recording and quantitative analysis of the visually-evoked activity of single neurons. *Application Received by Commissioner of Customs:* February 3, 1992.

Docket Number: 92-013. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Automatic Bubble Reader System, Model BDR-Series II. *Manufacturer:* Bubble Technology, Inc., Canada. *Intended Use:* The instrument will be used for the study of neutron exposure to personnel from $^{238}PuO_2$ fuel. Operators who are exposed to neutron radiation will wear bubble dosimeters while performing their job duties. Their neutron dose will be ascertained by using the reader system to analyze the dosimeters. *Application Received by*

Commissioner of Customs: February 3, 1992.

Docket Number: 92–014. *Applicant:* SUNY, State College of Optometry, 100 East 24th Street, New York, NY 10010. *Instrument:* Infra-red Autorefractor, Model R 1. *Manufacturer:* Canon, Japan. *Intended Use:* The instrument will be used to investigate changes in the interaction of accommodation and vergency during the development of presbyopia. The investigations will involve six experiments designed to examine the age-related changes in the near-visual system. In addition to the research, the instrument will be used for a number of clinical and teaching purposes including: (a) The laboratory program as part of the optometric theory course involving comparative assessment of autorefractors, (b) vision training labs and related patients clinics, (c) physiological optics teaching laboratories and (d) ocular disease clinics to assess the accommodative response associated with pathological conditions. *Application Received by Commissioner of Customs:* February 4, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–4796 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council (Council's) Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will hold public meetings on March 10-11, 1992. Both meetings on March 10 will be held from 10 a.m. until 5 p.m., and on March 11 from 9 a.m. until 12 noon.

The SSC will convene at the Council's headquarters (address below), and the AP at the Colegio de Ingenieros y Agrimensores, Nin and Skerret Streets, Hato Rey, P.R. The meetings will be conducted in English.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: February 26, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–4758 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) will hold its 51st meeting on March 11–13, 1992, at two different locations. On March 11 and 12, the SSC will meet at the Hawaii Maritime Center, Pacific room, Pier 7, Honolulu, Harbor, Honolulu, HI. The meeting will begin at 1:30 p.m., on March 11, and be reconvened at 9 a.m. on March 12. On March 13, the SSC will reconvene at 9 a.m. at the Hawaii Department of Land and Natural Resources, Kalanimoku Building Boardroom, 1151 Punchbowl Street, Honolulu, HI. The SSC will address the following items.

Crustaceans Fishery Management Plan: Discussion of recommendations regarding alteration of management strategy; including opening Layson Island to fishing; individual quotas, species quotas. Recommendations will be forwarded to the Council when it meets the following week.

Bottomfish Fishery Management Plan: Status reports on Federal permits.

Pelagics Fishery Management Plan: Discussion of longline moratorium and 3 year data plan; allowing vessels fishing exclusively outside the EEZ to land fish in Hawaii; longline area closures, including possible modification of area closures; and request for moratorium/limited entry when it meets the following week.

Program Planning: Discussion of mandatory reporting of catch and effort by all user groups catching Pelagic Management Unit Species. Recommendations will be forwarded to the Council when it meets the following week.

Fishery Rights of Indigenous People: Discussion of indigenous rights amendment to Pelagics Fishery Management Plan.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368; fax: (808) 526–0824.

Dated: February 25, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–4759 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's (Council's) Pelagics Advisory Panel (Hawaii Members only) will meet on March 11, 1992, at the McCoy Pavilion, Ala Moana Park, 1201 Ala Moana Boulevard, Honolulu, HI. The meeting will begin at 9 a.m.

The agenda is as follows: (1) Discussion of longline moratorium and 3 year data plan; (2) allowing vessels fishing exclusively outside the EEZ to land fish in Hawaii; (3) longline area closures, including possible modification of area closures; and (4) request for moratorium/limited entry program in tuna handline fishery. Recommendations will be forwarded to the Council when it meets the following week.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: February 25, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–4760 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–22–M

Travel and Tourism Administration

Travel and Tourism Advisory Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on March 26, 1992, at 9 a.m. at the Department of Commerce, room 5855, in Washington, DC.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and

includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Roll Call.
III. Visitor Processing
IV. Visa Waiver.
V. Congressional Issues
VI. SIC Codes and Alternate Measurement Systems.
VII. Miscellaneous.
VIII. Adjournment.

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, room 1860, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–1904) will respond to public requests for information about the meeting.

John G. Keller, Jr.,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 92–4797 Filed 2–28–92; 8:45 am]

BILLING CODE 3510–11–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 11 March 1992.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 26, 1992.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–4753 Filed 2–28–92; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0800, Thursday, 12 March 1992.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 26, 1992.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–4751 Filed 2–28–92; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1000, Thursday, 12 March 1992 and 0900, Friday, 13 March 1992.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5

U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 26, 1992.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-4752 Filed 2-28-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Availability of Implementation Plan; Nuclear Weapons Complex Reconfiguration Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability, implementation plan for the nuclear weapons complex reconfiguration programmatic environmental impact statement.

SUMMARY: Department of Energy (DOE) announces the availability of the Implementation Plan for the Nuclear Weapons Complex Reconfiguration Programmatic Environmental Impact Statement (PEIS). The Implementation Plan provides guidance for the preparation of the PEIS and records the issues identified as a result of the scoping process for the PEIS. It provides information regarding the alternatives and issues to be analyzed in the PEIS.

ADDRESSES AND FURTHER INFORMATION: A copy of the Implementation Plan or its Executive Summary may be obtained upon request to: Weapons Complex Reconfiguration Office, DP-40, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Attn: Implementation Plan, (202) 586-2700.

Request for further information on the DOE nuclear weapons complex reconfiguration program may be directed to the same office.

The addresses of the DOE public reading rooms established for this project are provided below.

SUPPLEMENTARY INFORMATION: On February 11, 1991, DOE published a Notice of Intent (NOI) to prepare a PEIS on reconfiguring the nuclear weapons complex (56 FR 5590). The PEIS is being prepared pursuant to the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500-1508), and DOE Guidelines for compliance with NEPA (52 FR 47662), as amended (54 FR 12474 and 55 FR 37174).

On November 1, 1991, the Secretary of Energy announced his decision to incorporate the environmental impact analysis for the DOE New Production Reactor (NPR) capacity proposal into the Reconfiguration PEIS and include NPR siting and technology decisions in the Reconfiguration Record of Decision. DOE invited the public to comment on incorporating the tritium capacity analysis into the Reconfiguration PEIS on November 29, 1991 (56 FR 60985). The Implementation Plan takes these comments into account.

On January 27, 1992, DOE provided public notice of its plans to prepare an environmental assessment (EA) on its proposal to consolidate certain nonnuclear facilities in the weapons complex (57 FR 3046). This analysis was originally envisioned as being a part of the Reconfiguration PEIS. The Implementation Plan discusses this proposal and the relationship between the proposed EA and the Reconfiguration PEIS.

The Implementation Plan also takes into account recent Presidential initiatives, announced on September 27, 1991, and January 28, 1992, to downsize the Nation's nuclear weapons arsenal. The alternatives analyzed in the PEIS and the EA will be based on a weapons complex production capability size for the reduced stockpile anticipated in the next century.

The Implementation Plan describes a range of alternatives to address siting and technology issues related to plutonium functions, tritium supply, uranium functions, assembly and disassembly functions, and research, development and testing functions performed by the nuclear weapons complex. The PEIS will analyze nuclear weapons complex functions currently conducted at the following sites:

- Idaho National Engineering Laboratory (Idaho Falls, Idaho).
- Lawrence Livermore National Laboratory (Livermore, California).
- Los Alamos National Laboratory (Los Alamos, New Mexico).
- Nevada Test Site (Las Vegas, Nevada).
- Pantex Plant (Amarillo, Texas).
- Rocky Flats Plant (Denver, Colorado).
- Sandia National Laboratories (Albuquerque, New Mexico).
- Savannah River Site (Aiken, South Carolina).
- Y-12 Plant (Oak Ridge, Tennessee).

In addition, the PEIS will analyze whether certain weapons complex functions should be located at the Hanford Site (Richland, Washington). The Implementation Plan may be revised, as necessary, during preparation of the PEIS.

Copies of the Implementation Plan have been placed in the fourteen public reading rooms established for the Reconfiguration PEIS. The location of these rooms are as follows.

DOE Public Reading Rooms

California

U.S. Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, California 94612, (415) 273-4428

Colorado

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, Colorado 80030, (303) 469-4435

Florida

U.S. Department of Energy, Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, Florida 34640, (813) 587-6715

Idaho

U.S. Department of Energy, Idaho Field Office, Public Reading Room, 1776 Science Center Drive, P.O. Box 1625, Idaho Falls, Idaho 83402, (208) 526-1191

Illinois

U.S. Department of Energy, Chicago Field Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (708) 972-2010

Missouri

U.S. Department of Energy, Public Reading Room, Red Bridge Branch, Mid-Continent Public Library, 11140 Locust Street, Kansas City, Missouri 64137, (816) 942-1780

New Mexico

U.S. Department of Energy, Albuquerque Field Office, Pennsylvania and H Streets, P.O. Box 5400, Kirkland Air Force Base, New Mexico 87115, (505) 845-5163

Nevada

U.S. Department of Energy, Nevada Field Office, 2753 South Highland Drive, Las Vegas, Nevada 89193, (702) 295-1274

Ohio

Miamisburg Library, 35 South Fifth Street, Miamisburg, Ohio 45342, Attn: Department of Energy Public Reading Room, (513) 866-1071

South Carolina

U.S. Department of Energy Reading Room, University of South Carolina, Aiken Campus, Writing Center, 171 University Parkway, Aiken, South Carolina 29801, (803) 648–6851, Extension 3262

Tennessee

U.S. Department of Energy, Oak Ridge Field Office, Freedom of Information Officer, 200 Administration Road, room G–209, P.O. Box 2001, Oak Ridge, Tennessee 37831, (615) 576–9344 or 576–1216

Texas

U.S. Department of Energy Reading Room, Lynn Library—Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109, (806) 371–5400

Washington

U.S. Department of Energy, Richland Field Office, 825 Jadwin Avenue, room 157, P.O. Box 1970, Mail Stop Al–65, Richland, Washington 99352, (509) 376–8583

Washington, D.C.

U.S. Department of Energy, Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–6020

For information on the availability of specific documents and hours of operation, please contact the reading rooms at the telephone numbers provided.

Issued in Washington, DC this 26th day of February 1992.

Richard A. Claytor,

Assistant Secretary for Defense Programs.

[FR Doc. 92–4799 Filed 2–28–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. JD92–03816T Texas–49]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 24, 1992.

Take notice that on February 18, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Meek Sand Formation in Fort Bend County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application includes portions of the following surveys:

Survey	Abstract	Section
Gail Borden Jr	A–12	4
German Emigration	A–176	6
Barry West	A–345	5
Andrew Moore	A–293	3
Jermiah S. O'Connor	A–66	6
Shelby, Frazier & McCormick.	A–85	6

The notice of determination also contains Texas' findings that the referenced portions of the Wilcox Meek Sand Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–4692 Filed 2–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD92–03817T Texas–9 Addition 11]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 24, 1992.

Take notice that on February 18, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Travis Peak Formation in Smith and Cherokee Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application consists of 5,953 acres described as follows:

Survey	Abstract	County	Acres
J.M. Procella	A–17	Smith	2111
J.M. Porcella	A–43	Cherokee	2882
Charles Summerville.	A–939	Smith	480
Wm M. Smith	A–938	Smith	480

The notice of determination also contains Texas' findings that the referenced portions of the Upper Travis Peak Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92–4693 Filed 2–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD92–03818T Texas–10 Addition 13]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 24, 1992.

Take notice that on February 18, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Edwards Limestone Formation underlying Colorado County, Texas, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 105,593 acres in Colorado County, Texas and consists of the surveys listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portions of the Edwards Limestone Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Edwards Limestone Formation in Colorado County, Texas

Survey and Abstract Numbers

Eli Clapp	A–149
Micah Andrews	A–68

Survey and Abstract Numbers—Continued

Basil G. Ijams	A–350
Reddins Andrews	A–52
Amos D. Kenion	A–367
R.M. Johnson	A–364
M.H. Phelps	A–454
Asa Townsend	A–557
Wm. Bell	A–103
W. Stapleton	A–509
Alfred Kelso	A–368
Jos. Garwood	A–220
Henry Austin	A–4
Freeman Pettus	A–37
Jos. Duty	A–20
Chas. Fordham	A–24
Barnard Snider	A–505
Wm. R. Hunt	A–29
Peyton R. Splane	A–41
J. Tumlinson	A–46
Jas. Cummins	A–13
Wm. Stagner	A–511
J.L. Gilder	A–226
N. Kelly	A–374
Wm. Staines	A–512
A. Hunt	A–336
Wm. R. Turner	A–554
Abel Beason	A–74
C. Geiseike	A–227
W. Rolson	A–483
John Cronican	A–142
Jas. Cronican	A–139
Wm. Freils	A–209
S.J. Redgate	A–478
J. Rawlings	A–476
B.M. Dougherty	A–177
E. Jones	A–359
E. Jones	A–360
Colin DeBland	A–178
J. Lynch	A–389
Thomas Matthews	A–413
H.H. Oates	A–439
Erasmus Jones	A–353
P. Piper	A–446
Peter Piper	A–447
F.A. Zimmercheidt	A–629
Casper Simon	A–502
Edw. Ruhman	A–479
Robt. H. Tobin	A–551
Chas. Fritsche	A–199
Peter Piper	A–460
Wm. Freils	A–208
T.P. Anderson	A–54
L. Mackerly	A–414
R.M. Wright	A–595
Ransom Weed	A–598
Jno. Hall	A–265
Spires Dooley	A–181
G.O. Bright	A–444
John Weigl	A–596
J. Nelson	A–431
James Nelson	A–434
James Tylee	A–550
Bernard Sherer	A–498
B.H. Beimer	A–75
W. Hunt	A–263
S. Dooley	A–182
Jas. Tumlinson	A–47
Freeman Pettus	A–38
Jesse Burnham	A–23

[FR Doc. 92–4694 Filed 2–28–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP92–115–000]

El Paso Natural Gas Co; Tariff Filing

February 24, 1992.

Take notice that on February 14, 1992, El Paso Natural Gas Company ("El Paso"), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with sections 21 and 22, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso's Second Revised Volume No. 1 and First Revised Volume No. 1–A FERC Gas Tariffs, respectively, certain tariff sheets to become effective April 1, 1992 and May 1, 1992, as indicated therein.

El Paso states that the filing reflects that no additions have been made to the amount presently being amortized under El Paso's Take-or-Pay Cost Recovery mechanism as set forth in El Paso's filing made October 31, 1991 at Docket No. RP92–18–000. El Paso states that it is proposing certain adjustments to the Monthly Direct Charge and Throughput Surcharge, as more fully discussed below. First, the tendered tariff sheets reflects El Paso's proposal to extend the amortization period of the Throughput Surcharge through March 31, 1996 for all costs remaining to be amortized under El Paso's Take-or Pay cost recovery mechanism as of March 31, 1992. No change is proposed in the amortization period for the Monthly Direct Charge. Second, the tendered tariff sheets reflect the true-up of the take-or-pay buyout and buydown costs overcollected through the Throughput Surcharge for the period September 1, 1991 through December 31, 1991. Third, adjustments are being made to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. As a result, the Throughput Surcharge has been changed from a Maximum Rate of $0.2341 per dth to $0.0355 per dth. Fourth, effective May 1, 1992, certain tariff sheets reflect a revised Monthly Direct Charge due to the full amortization of certain amounts paid by El Paso, as a downstream pipeline, to Valero Interstate Transmission Company ("Valero"), as an upstream pipeline supplier.

Regarding the tendered tariff sheets, El Paso respectfully requested that such tendered tariff sheets be accepted by the Commission and permitted to become effective April 1, 1992, which is not more than sixty (60) days nor less then thirty (30) days after the date of filing. El Paso is making this filing with the Commission's notice requirements and almost a month before the minimum requirement; therefore, El Paso respectfully requested that the Commission act on such filing and issue an order earlier than or at least two (2) weeks before the proposed April 1, 1992 effective date (on or before March 18, 1992). Such action will give El Paso's customers the necessary time to make decisions for the April, 1992 business month.

Regarding the tendered tariff sheets containing the Monthly Direct Charge after the complete amortization of the Valero amounts, El Paso respectfully requested that, pursuant to § 154.51 of the Commission's Regulations, waiver of the notice requirements of § 154.22 of the Commission's Regulations be granted so as to permit such tendered primary tariff sheets to become effective May 1, 1992.

Further, El Paso respectfully requested waiver of all applicable Commission Rules and Regulations, to the extent necessary, to permit the tendered tariff sheets to be accepted and made effective on the dates indicated therein.

Copies of the filing were served upon all interstate pipeline system transportation and sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–4689 Filed 2–28–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP89–1–013 and RP92–86–002]

Mojave Pipeline Co.; Tariff Filing

February 24, 1992.

Take notice that Mojave Pipeline Company (Mojave), on February 19, 1992, tendered for filing Third Substitute Original Tariff Sheet No. 11 to its FERC

Gas Tariff Original Volume No. 1, in compliance with part 154 of the Commission's regulations and the Commission's orders of January 30, 1992, in Docket Nos. CP89–1–008 and February 5, 1992, in Docket No. RP92–86–000, as revised in an errata issued by the Commission on February 14, 1992.

Mojave states that Third Substitute Original Sheet No. 11 contains revised rates for firm and interruptible transportation as authorized by the Commission in its errata issued on February 14, 1992. Mojave has requested a waiver of § 154.22 of the Commission's regulations, which require the tariff sheets be filed no less than 30 days before they are to become effective. Mojave proposes that the tariff sheet become effective February 1, 1992, which is the date that Mojave's tariff was made effective.

Mojave states that copies of the filing were served upon all of Mojave's jurisdictional transportation customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before March 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–4690 Filed 2–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–3–16–004]

National Fuel Gas Supply Corp.; Proposed Changes to FERC Gas Tariff

February 24, 1992.

Take notice that on February 14, 1992, National Fuel Gas Supply Corporation ("National") submitted for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to become effective August 1, 1991:

(A) Second Substitute Tenth Revised Sheet No. 5

National states that the purpose of this filing is to replace Sub Tenth Revised Sheet No. 5 as directed in the Commission's February 6 Letter Order. Item (A) reflects (1) a $0.27 per Dth increase in the demand component of Rate Schedules CD and RQ; (2) a 1.77 cents per Dth increase in the demand adjustment component of Rate Schedules CD and RQ; (3) a 5.15 cents per Dth increase in the commodity component of Rate Schedule CD and RQ; and (4) a 6.04 cent Dth increase in the commodity component of Rate Schedules SI, I–1, and GSS, as compared to National's July Quarterly PGA, in Docket No. TQ91–3–16–000, approved by the Commission's June 21 Order. The effective rates are identical to those in Sub Tenth Revised Sheet No. 5.

National states that copies of this filing were served on its jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rule of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–4686 Filed 2–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2438—New York]

New York State Electric & Gas Corp.; Soliciting Applications

February 24, 1992.

On December 19, 1988, New York State Electric & Gas Corporation, the existing licensee for the Seneca Falls and Waterloo Stations Hydroelectric Project No. 2438, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. The original license for Project No. 2438 was issued effective March 1, 1965, and expires December 31, 1993.

The project is located on the Seneca River in Seneca County, New York. The principal project works consist of: (a) The Seneca Falls Development comprising (1) a powerhouse, located on a concrete gravity-type dam owned by the State of New York, containing four 2,650-horsepower turbines, each connected to a 2,000-kilowatt generator; (2) step-up transformers; (3) a short 34.5-kilovolt transmission line to the Seneca Falls switchyard; and (4) appurtenant electrical and mechanical facilities; and (b) The Waterloo Development comprising; (1) a concrete gravity-type dam; (2) a canal; (3) a powerhouse containing four 740-horsepower turbines, each connected to a 480-kilowatt generator; (4) step-up transformers; (5) a short 34.5-kilovolt transmission line to the Waterloo switchyard; and (6) appurtenant electrical and mechanical facilities.

Pursuant to section 15(c)(1) of the Act, the deadline for filing an application for new license and any competing license applications was December 31, 1991. No applications for license for this project were filed. Therefore, pursuant to section 16.25 of the Commission's regulations, the Commission is soliciting applications from potential applicants other than the existing licensee.

Pursuant to section 15(b)(2) of the Act the licensee is required to make available certain information described in § 16.7 of the Commission's regulations. Such information is available from the licensee at Kent Building, Chenango Street, Binghamton, New York 13902.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) May apply for a license under part I of the Act and part 4 (except § 4.38) of the Commission's regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of §§ 16.8 and 16.10 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[FR Doc. 92–4684 Filed 2–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–88–002]

Pacific Gas Transmission Co.; Change in FERC Gas Tariff

February 24, 1992.

Take notice that on February 20, 1992, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance Second Revised Sheet No. 12 to be a part of its FERC Gas Tariff, Second Revised Volume No. 1.

PGT states that the purpose of the filing is to revise the tariff sheet in compliance with the Commission's "Order Accepting and Rejecting Tariff Sheets Subject to Conditions", issued on February 7, 1992.

PGT has requested an effective date of February 1, 1992 for the tendered tariff sheet.

PGT states that a copy of the filing is being served on PGT's jurisdictional customers, affected state regulatory commissions and all parties on the official service list as compiled by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-4687 Filed 2-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-41-003 RP88-227-030]

Paiute Pipeline Co.; Compliance Filing

February 24, 1992.

Take notice that on February 20, 1992, Paiute Pipeline Company (Paiute) submitted a compliance filing to the Commission with respect to Paiute's clearance of its Account No. 191 balance following the implementation of full conversions by its sales customers to firm transportation service under a settlement approved by the Commission in Docket Nos. RP88-227, et al. (Settlement). Paiute states that its filing is being submitted in compliance with an order issued by the Commission in Docket Nos. TA91-1-41-002 and RP88-227-028 on January 21, 1992, as well as the Commission's orders approving the Settlement.

Paiute states that its compliance filing is the second filing that Paiute has submitted concerning the clearance of its Account No. 191 balance following the termination of Paiute's sales service. On September 16, 1991, Paiute submitted a filing in Docket No. RP88-227-028 which addressed the treatment of Paiute's Account No. 191 balance as of July 31, 1991. In that filing, Paiute reported that it made a distribution on July 31, 1991 to its four former sales customers of an estimated credit balance of $271,548, and also noted that it anticipated that it would be paying or receiving additional amounts attributable to its Account No. 191.

Paiute states that the Commission's January 21, 1992 order addressed Paiute's September 16, 1991 compliance filing in Docket No. RP88-227-028 as well as a compliance filing submitted by Paiute on November 30, 1990 in Paiute's annual PGA proceeding in Docket No. TA91-1-41. Paiute further states that the Commission in such order directed Paiute to respond to certain matters discussed in the order and to file a revised report concerning its closeout of its Account No. 191.

Paiute indicates that in its instant compliance filing it has included responses to the specific matters raised by the Commission in its January 21, 1992 order. Paiute also states that it has reflected in its filing additional amounts attributable to its preconversion sales service that have been billed or refunded to Paiute since its September 16, 1991 filing in Docket No. RP88-227-028, as well as certain corrections and adjustments to its purchased gas cost accounts that Paiute has recorded or discovered in reviewing such accounts since that prior filing. Paiute states that the entries, adjustments, and corrections to its Account No. 191 reflected in its filing result in an additional credit balance of $566,161 over that reflected in Paiute's September 16, 1991 filing, as of February 29, 1992. Paiute states that it intends to make a distribution of this amount to its four former sales customers on February 29, 1992, using the allocation procedure prescribed in the Settlement.

Paiute requests that the Commission approve Paiute's distribution of its Account No. 191 balance as proposed in its filing, including approval of the level of the balance that Paiute will distribute on February 29, 1992. Paiute also renews its request that the Commission approve Paiute's July 31, 1991 distribution of Account No. 191 amounts as discussed in its September 16, 1991 filing in Docket No. RP88-227-028.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before March 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4685 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-029]

Paiute Pipeline Co.; Report of Refunds

February 24, 1992.

Take notice that Paiute Pipeline Company (Paiute) on February 12, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) an amended Report of Refunds, made in accordance with the provisions of Article III of the Stipulation and Agreement filed in these proceedings and approved by Commission Orders of September 20, 1990 and March 26, 1991.

Paiute states that on July 15, 1991, it refunded to its jurisdictional customers a total of $18,962,676, consisting of principal of $16,504,216 through May 31, 1991, and interest of $2,458,460 calculated through July 14, 1991. This report revises and supersedes the refund report filed by Paiute on August 15, 1991 in Docket No. RP88-227-027. Paiute states in the amended report that the amount of principal refunded was correct in the August 15, 1991, report but that based upon revised calculations it paid an additional $16,135 in interest and reallocated the refunds to the various customers.

Paiute states that a copy of the amended refund report was provided to Paiute's jurisdictional customers, all interested state commissions and all parties to Docket No. RP88-227.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-4688 Filed 2-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-116-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

February 24, 1992.

Take notice that on February 19, 1992 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing First Revised Sheet No. 23 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is attached thereto. The proposed effective date of the enclosed tariff sheet is April 1, 1992.

On June 19, 1991, the Federal Energy Regulatory Commission (Commission) issued its "Order Approving Settlements As Modified And Issuing Certificates" in Docket Nos. CP88-391-004 *et al.* (June 19 Order), which approved with certain modifications Transco's June 22, 1990 Settlement filed in Docket Nos. RP87-7-000 *et al.* (Rate Settlement) and Transco's September 17, 1990 Settlement filed in Docket Nos. CP88-391 *et al.* (GIC Settlement). Pursuant to Article III of the GIC Settlement, during Phase II (April 1, 1991 through March 31, 1994), there shall be generally applicable fixed monthly Firm Service Fees. Specifically, during the period from April 1, 1992 through March 31, 1993, the monthly Firm Service Fee shall be $6.20 per Mcf of daily sales entitlement. Such Firm Service Fee is set forth in Exhibit A, section 3(b) of the FS Service Agreement. The purpose of this filing is to set forth in Transco's Volume No. 1 Tariff the Firm Service Fee under Rate Schedule FS of $6.20 commencing April 1, 1992.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Regulations. All such motions or protests should be filed on or before March 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-4691 Filed 2-28-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-87-NG]

Orchard Gas Corp.; Order Granting Amendment to Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an granting amendment to long-term authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Orchard Gas Corporation authorization to import up to 25,000 Mcf per day of Canadian natural gas for an eighteen and one-half year term beginning on November 1, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-4801 Filed 2-28-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $375,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Otis Ainsworth (Case No. LEF-0039). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund from the crude oil funds should be clearly labeled "Applications for Crude Oil Refund" and should be mailed to Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund must be filed in duplicate no later than June 30, 1992. Any party who has previously filed an Application for Refund in crude oil proceedings should not file another Application for Refund from the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $375,000 that has been remitted by Otis Ainsworth to the DOE. The DOE is currently holding the funds in an interest bearing account pending distribution.

The DOE will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, federal government, and injured purchasers of refined products. Under the plan, refunds to the states would be in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund must be postmarked no later than June 30, 1992. As we stated in the Decision, any party who has previously submitted a refund application in the crude oil refund proceedings should not file another Application for Refund in the crude oil

proceedings. That previous application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: February 25, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Implementation of Special Refund Procedures

Name of Firm: Otis Ainsworth.
Date of Filing: October 31, 1991.
Case Number: LEF–0039.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On October 31, 1991, the ERA filed a Petition for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Otis Ainsworth (Ainsworth). On June 17, 1985, the OHA issued a Remedial Order against Ainsworth for violations of the crude oil producer price regulations during the period from November 1973 through December 1977. Otis Ainsworth, 13 DOE ¶ 83,018 (1985). Ainsworth subsequently filed an appeal with the Federal Energy Regulatory Commission (FERC). On February 26, 1987, FERC reduced in part and affirmed the Remedial Order and ordered Ainsworth to make restitution in the amount of $440,639.00. The United States filed suit on January 31, 1990 in the United States District Court for the Southern District of Mississippi to enforce the Remedial Order. In September 1990, the Chancery Court for the Second Judicial District of Jones County, Mississippi (Chancery Court) appointed Alva Sue Dickey Ainsworth as the Conservator for the Estate of Otis Ainsworth. The United States and the Conservator reached a compromise and settlement which was approved by the Chancery Court on June 13, 1991. On July 1, 1991, the United States executed a General and Absolute Release in settlement of the matters set forth in the Remedial Order in consideration for $375,000 remitted on that day by the Conservator. This Decision and Order establishes the OHA's procedures for distributing those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot ready identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Ainsworth and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986) (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, i.e., New York Petroleum, Inc., 18 DOE ¶ 85,435 (1988) (NYP); Shell Oil Co., 17 DOE ¶ 85,204 (1988) (Shell); Ernest A. Allerkamp, 17 DOE ¶ 85,079 (1988) (Allerkamp), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals (TECA). In the case In re: The Department of Energy Stripper Well Exemption Litigation, various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In re: The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar (the) OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

II. The Proposed Decision and Order

On November 7, 1991, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged crude oil violation amount obtained from Ainsworth. 56 FR 57887 (November 14, 1991). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PDO, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PDO stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil

overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Ainsworth settlement funds Consequently, the procedures will be adopted as proposed.

III. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $375,000 remitted by Ainsworth, plus the interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full twenty percent of the alleged crude oil violations amount, or $75,000, plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. E.g., Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, a covered product is any product that was covered by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751–760, and was primarily produced from crude oil at a crude oil refinery. E.g., Anchor Continental, Inc., 22 DOE ¶ ——, Case No. RF272–62992 (January 3, 1992). Following subpart V precedent, reasonable estimates of purchase volumes of covered products may be submitted. E.g., Greater Richmond Transit Co., 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of covered petroleum products purchased during the period of price controls. E.g., A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. E.g., Berry Holding Co., 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury E.g., NYP, 18 DOE at 88,701–03. The United States District Court for the District of Kansas recently upheld the OHA's position that generalized evidence does not suffice to rebut the end-user presumption. If an interested party wishes to rebut the end-user presumption it must present evidence relevant to the specific factual situation of the applicant. In re: The Department of Energy Stripper Well Exemption Litigation, 746 F. Supp. 1446 (D. Kan. 1990).

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. Mid-America Dairyman, Inc. v. Herrington, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); accord, Boise Cascade Corp., 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($375,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.000000185 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one Application for Refund from the crude oil overcharge funds. E.g., Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The DOE has established June 30, 1992 as the current deadline for filing an Application for Refund from the crude oil funds. Quintana Energy Corp., 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0008 per gallon. However, while we anticipate that applicants that filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. E.g., Seneca Oil Co., 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a refund, a claimant should submit an Application for Refund. Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Each crude oil Application for Refund should contain the type of information specified by the OHA in past decisions. See Texaco Inc., 19 DOE ¶ 85,200 at 88,374, corrected, 19 DOE ¶ 85,236 (1989); Hood Goldsberry, 18 DOE ¶ 85,902 at 89,477–78 (1989); Wickett Refining Co., 18 DOE ¶ 85,659 at 89,081–82 (1989).

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $300,000, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate the $300,000, plus interest, available for disbursement to the states and federal government and transfer one-half of that amount, or $150,000, plus interest, into an interest-bearing subaccount for the states, and one-half, or $150,000, plus interest, to an interest bearing subaccount for the federal government. At an appropriate time in the future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states. Refunds to the states will be in

proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Otis Ainsworth may now be filed.

(2) All Applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1992.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $375,000 (plus interest) from the Otis Ainsworth subaccount, Account Number 420C00254W, pursuant to Paragraphs (4), (5), and (6) of this decision.

(4) The Director of Special Accounts and Payroll shall transfer $150,000 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $150,000 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $75,000 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

Dated: February 25, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-4802 Filed 2-28-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Nuclear Energy

Sales of Stable Isotopes

AGENCY: Department of Energy, Office of Nuclear Energy, Isotope Production and Distribution Program.

ACTION: Proposed response to withdrawal petition of Isotec, Inc.

SUMMARY: The Department of Energy (DOE) is proposing to deny the Withdrawal Petition (the Petition) of Isotec, Inc. (the Petitioner), a U.S.-based market supplier of stable isotopes, which has requested that DOE discontinue its production and distribution of enriched stable isotopes and the life science isotopes of Carbon, Nitrogen, and Oxygen (the Products) in commercial markets and to other Federal agencies. Notice of receipt of the Petition and Request for Public Comments on the request was published at 56 FR 46609, September 13, 1991 (the September 13, 1991 Notice). The proposed response is set out in the **SUPPLEMENTARY INFORMATION** section, below.

At the Petitioner's request, DOE is using the withdrawal guidelines provided in the Atomic Energy Commission (AEC) Statement of Policies and Procedures for the Transfer of Commercial Radioisotope Production and Distribution to Private Industry, March 2, 1965 (the Policy Statement) (**Federal Register**), March 9, 1965) in proposing the denial of the Petition.

The record in the proceeding consists of the Petition, as supplemented, and its appendices; relevant background materials from DOE's files, and the public comments submitted during the comment period. Comments received after the comment period closed (October 28, 1991) or from sources other than through the Notice and included in the record for information purposes are identified as such. The proposed decision is not based upon these comments.

DATES AND COMMENTS: DOE will accept comments on the proposed response until April 1, 1992. The proposed response will become final April 16, 1992, if the agency deems no further action to be required as the result of information brought to its attention during the comment period.

ADDRESSES: Comments are to be submitted to Donald E. Erb, Director, Isotope Production and Distribution Program (NE-48), A-430, 19901 Germantown Road, Germantown, Maryland 20874, telephone (301) 903-5161.

The public record is available in DOE's Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday-Friday (except for Federal holidays).

SUPPLEMENTARY INFORMATION:

I. Introduction

By date of July 27, 1990 and Supplement of February 25, 1991, the Petitioner requested that DOE withdraw from all distribution of stable isotopes (the Products) to commercial users and other Federal agencies. For purposes of the Petition, the term "stable isotopes" includes the isotopes listed in appendix A to the February 25, 1991 supplemental filing to the Petition (the Supplement), with the exception of sales of raw material Helium-3 in bulk form, and gas isotope mixing in competition with private sector suppliers.

The Petitioner bases its request upon these premises:

(1) The Products are reasonably available form private-sector suppliers in effectively competitive markets;

(2) DOE distribution is without statutory basis, is unnecessary, and places the agency in competition with private-sector suppliers; and

(3) Given these circumstances, the Atomic Energy Act of 1954, as amended, and the non-competition policies of the United States Government and DOE dictate DOE's withdrawal from markets for the Products.

The Petition is summarized in the September 13, 1991 Notice.

II. Background

In the Policy Statement, the Atomic Energy Commission declared its intention to refrain from competition with private sources capable of producing and processing radioisotopes, when the materials were reasonably available commercially. The criteria provided in the withdrawal guidelines for making this determination include: The presence of a market in which there are (1) effective competition; (2) assurance that private producers will not discontinue their businesses under circumstances in which the government could not resume supply in time to prevent public interest from being adversely affected; and (3) prices that are reasonable and consistent with the encouragement of research in and development and use of atomic energy.

The background materials in the record reflect a history of informal requests by the Petitioner that DOE withdraw from various stable isotope markets in accordance with the noncompetition policy for radioisotopes.

For example, in 1983 the Petitioner asked DOE to withdraw from production and distribution of various isotopes of Nitrogen and Oxygen and enter into an agreement with it to permit it to store and process DOE's Helium-3 trailer gas at its (Petitioner's) facilities. At the time of request, the Petitioner was in the early stages of developing or assembling its Nitrogen-production facilities; its Oxygen product was not produced domestically and there were no other commercial U.S. Oxygen producers; and the offer for the Helium-3 trailer gas was below the established price for the material, inconsistent with DOE's Full Cost Recovery Program, and, if accepted by DOE, could have provided the Petitioner with an unfair advantage in the market. In part, the request was denied because of the Petitioner's "past performance history, i.e., the fact that Carbon-12, 13 distillation has not yet commenced at ISOTEC, although ISOTEC requested that DOE cease production and distribution of these isotopes as of the end of CY 1982." Letter of November 15, 1983, Director, Energy Technologies Division, Albuquerque Operations Office, DOE, to Isotec, Incorporated.

By 1985 and in response to repeated requests from the Petitioner, DOE had withdrawn from the commercial sale of 34 isotopes, including isotopes of Neon, Argon, Krypton, Xenon, Helium, and Carbon. Letter of August 29, 1985 from Acting Associate Director for Health and Environmental Research, Office of Energy Research, DOE, to Attorney for Isotec, Inc.

By early 1988, there were warnings of problems in some markets: After DOE withdrew from Carbon-13 distribution, the Petitioner was the only source of the isotope, prices had risen, and the demand for the Product was believed to be close to Petitioner's supply capacity. A second firm was making an effort to enter the market. Letter of President, Cambridge Isotope Laboratories, to Manager, Isotope Sales & Production, Monsanto Research Corporation, February 3, 1988.

Also in 1988, DOE's Inspector General concluded a detailed audit investigation of isotope operations at DOE's Oak Ridge National Laboratory and the Mound Plant and reported problems resulting from DOE's attempts to implement the non-competition policy. Report on Isotope Production and Related Sales at the Oak Ridge National Laboratory and the Mound Plant, DOE/IG–0251, February 16, 1988 (IG Report). The Helium-3 market was specifically reviewed in the audit. The investigators found that, in 1978, a private company, unidentified in the IG Report, had begun purchasing Helium-3 at an advantage from DOE for resale to domestic customers at substantial markups and, in 1979, had asked DOE to withdraw from processing and distributing purified Helium-3. At the time, the only other significant source of Helium-3 was the U.S.S.R. nuclear weapons programs, which was not actively marketing in the United States. The company was not a producer of the isotope, which is a byproduct of nuclear weapons production; further, the investigators reported that the company was unable to remove impurities from Helium-3 until some 2 years after it made the withdrawal request. Although there was not a competitive market, DOE withdrew from distribution of Helium-3 in 1981, contrary to the AEC policy. IG Report, pp. 11–12. The investigators also concluded that, because DOE also stopped distribution to other Federal agencies, the U.S. Navy had to purchase its needs from the company, which was the sole domestic distributor, at prices substantially in excess of what DOE had charged Government customers. IG Report, p. 13.

The Petitioner asserts that, until September 1990, it was unaware of the IG Report, which it challenges for, among other reasons, assuming that DOE should be involved in the sale of commercial isotopes. Letter of November 27, 1990 from Isotec Counsel to the Secretary of Energy. In February 1990, however, the IG Report, which was (and is) a publicly-available document, had caused other parties to question DOE on whether it had not created "another domestic monopoly in the sale and distribution of a stable isotope * * * for (Petitioner) when DOE ceased production of Carbon-13 at Los Alamos in 1985." Letter of Honorable Edward J. Markey, Member of Congress, to Admiral James D. Watkins, Secretary of Energy, February 2, 1990. DOE then acknowledged that a review of the availability, origin, and users of isotopes suggested that its past withdrawal policy had not enhanced the availability of isotopes from competitive domestic suppliers and that interpretations and applications of the policy had, in some instances, aided in the establishment and maintenance of monopolies utilizing production and separation technology of U.S. origin. Letter of May 2, 1990 from James D. Watkins, Admiral, U.S. Navy (Retired), to Honorable Edward J. Markey, Member of Congress.

In May 1990, Spectra Gases, Inc. indicated that it would need to purchase supplies of noble gas products from the Mound Plant, its only domestic alternative supplier, if it were to continue to compete with the petitioner as a supplier of isotope mixtures because of the "exorbitant price increases imposed by the sole private domestic producer." It cited rises in Petitioner's prices for 99.95%-enriched Neon-20 and 99.9%-enriched Neon-22 of 136% and 97%, respectively, over the one-year period following acquisition of the Petitioner (in June 1989) by Nippon Sanso. Letter of May 24, 1990 from Purchasing Manager, Spectra Gases, Inc. to Mound Isotope Sales Office.

In 1989, DOE idled its Isotopes of Carbon, Oxygen, and Nitrogen production facility at the Los Alamos National Laboratory (the ICON facility) because of the curtailment of primary mission need. By 1990, DOE heard about the consequences that reduced supplies of these isotopes could have on research and use, particularly in nuclear medicine: Sharp rises in demand for isotopes, such as Carbon-13, and increases in the length of time required to obtain delivery. These obstacles could not only adversely impact research and clinical studies, but could stifle future commercial and market potentials for applications using these isotopes. Letters of Kenneth Kwong, Ph.D., Massachusetts General Hospital-Harvard Medical School, July 9, 1991; Randall B. Lauffer, Ph.D., Massachusetts General Hospital-Harvard Medical School, July 2, 1990; and Peter D. Klein, Ph.D., Department of Pediatrics, Baylor College of Medicine, January 2, 1990 (attachment to Klein letter dated March 12, 1991). In July 1990, the Petitioner filed its request that DOE withdraw from commercial distribution of the Products, which include certain of these isotopes used in nuclear medicine and biological studies. Supplement to the Petition, appendix A.

During 1991, complaints were brought to DOE's attention concerning stable isotope market dislocations: Prices for several of the Products critical to research and clinical applications were rising and unavailability of timely supplies was impacting use. Oxygen-18 water for use in Position Emission Tomography (PET), ordered by a regional medical center from the Petitioner in December 1990 for February 1991 delivery, was not delivered as promised and the earliest date given by Petitioner for delivery of new orders was December 1991. Cambridge Isotope Laboratories' delivery dates were even farther in the future. Letter of Syncor International Corporation, March 5, 1991. Such shortages were reported to have seriously impacted human nutrition

studies and one source attributed the situation to the Petitioner, "who was well aware of the magnitude of demand three years ago, and chose to postpone the necessary expansion in capacity." Letter of Peter D. Klein, Ph.D., Department of Pediatrics, Baylor College of Medicine, March 12, 1991. New facilities were finding it difficult to obtain necessary supplies and the dramatic price increases were cited as causing researchers difficulty in applying for grants. Correspondents reported that some research projects had to be delayed or canceled as a result. Letters of T.P. Stein, Ph.D., University of Medicine and Dentistry of New Jersey School of Osteopathic Medicine, March 21, 1991; Reed W. Hoyt, Ph.D., Research Physiologist, U.S. Army Research Institute of Environmental Medicine, March 21, 1991; James P. DeLany, Ph.D., Director of the Stable Isotope Laboratory, Pennington Biomedical Research Center, Louisiana State University, April 11, 1991; Dale A. Schoeller, University of Chicago Clinical Nutrition Research Unit to Dr. Darla Danford, Director, Division Nutrition Research Coordination, April 17, 1991; J.M. McGehee, Executive Director, Institute for Clinical PET, April 22, 1991 and attached responses to survey published by ICP; Steven S. Zigler, Ph.D., Methodist Medical Center of Illinois, June 5, 1991; and Michael I. Goran, Ph.D., University of Vermont, College of Medicine, July 18, 1991.

III. Current Market Conditions and Future Prospects

The Petition is based, in part, upon the Petitioner's assertion that the production, processing, and distribution capability of the private sector is sufficient to satisfy user demands for the Products and that it and other suppliers located in the United States, Europe, and Japan are dedicated to continuing to supply the Products to the market at prices that are competitive, reasonable, and consistent with the encouragement of research and development and use. Consequently, in the September 13, 1991 Notice, DOE invited researchers, users, and other interested parties to provide it with information and views that would enable it to determine the validity of this assertion, in view of the feedback previously received concerning market dislocations. Information was sought in particular on Product availability from private-sector sources, prices, delivery schedules, and other factors that could impact research and development and use of the Products. The comments received portrayed the following situation:

A. Private Sector Capability To Meet Market Demands at Prices Conducive to Research and Development and Use

An initial overview of the markets for the Products indicates that the number of private-sector suppliers, worldwide, is limited and, domestically, is extremely small. Comments of Robert W. Atcher, Nuclear Medicine Research-Chemistry Division, Argonne National Laboratory, October 22, 1991 (Atcher/Argonne); Alfred P. Wolf, Director, Cyclotron-PET Program, Department of Chemistry, Brookhaven National Laboratory, September 20, 1991 (Wolf/Brookhaven); Robert E. Connick, Professor of Chemistry, University of California-Berkeley, October 22, 1991 (Connick/UC-Berkeley); Paul Ortiz de Montellano, Professor of Pharmaceutical Chemistry and Pharmacology, School of Pharmacy, University of California-San Francisco, October 17, 1991 (Ortiz/UC-San Francisco); Daniel P. Costa, Ph.D., Associate Professor of Biology, University of California—Santa Cruz, October 26, 1991 (Costa/UC-Santa Cruz); Robert N. Beck, Professor of Radiology, the Franklin McLean Memorial Research Institute, University of Chicago, October 25, 1991 (Beck/Univ. Chicago); J. Thomas Brenna, Assistant Professor, Division of Nutritional Sciences, Mass Spectrometry Laboratory, Cornell University, October 24, 1991 (Brenna/Cornell); James J. Carni, Project Leader, CR-Bioproducts Laboratory, the Dow Chemical Company, October 25, 1991 (Carni/Dow); George Palko, Vice President, Manufacturing, GE/Reuter-Stokes, Inc., October 25, 1991 (Palko/Reuter-Stokes); Eric Oldfield, Professor of Chemistry, University of Illinois at Urbana-Champaign, October 10, 1991 (Oldfield/Univ. Ill.); Carl H. Poppe, Division Leader, Nuclear Chemistry Division, *et al.*, Lawrence Livermore National Laboratory, October 18, 1991 (Poppe/LLNL); George A Bray, M.D., Executive Director and Professor, Pennington Biomedical Research Center, Louisiana State University, October 16, 1991 (Bray/LA. State); James P. DeLany, Ph.D., Director, Stable Isotope Laboratory, Pennington Biomedical Research Center, Louisiana State University, October 24, 1991 (DeLany/LA. State); Nelson D. Goldberg, Ph.D., Professor of Biochemistry, University of Minnesota Medical School, October 10, 1991 (Goldberg/Univ. MN); Wynn A. Volkert, Ph.D., Professor of Radiology & Biochemistry, Department of Radiology, School of Medicine University of Missouri-Columbia, October 23 ,1991 (Volkert/Univ. MO.); and Gopal Subramanian, Ph.D., President, Radiopharmaceutical Science Council of the Society of Nuclear Medicine and Professor of Radiology, Division of Nuclear Medicine, College of Medicine, State University of New York, Syracuse, October 25, 1991 (Subramanian/Soc. Nuc. Med.).

The situation regarding producers is less clear, although the comments suggest that, worldwide, they are fewer in number than the suppliers. Some commenters raised the issues of whether, in fact, there are any domestic producers of certain stable isotopes, *e.g.* those of the noble gases, and whether and to what extent domestic suppliers dependent for their materials upon foreign producers or domestic users have, by necessity, been forced to rely upon foreign sources in the past. Comments of Dale A. Schoeller, Ph.D., Associate Director, Clinical Nutrition Research Unit, University of Chicago, October 25, 1991 (Schoeller/Univ. Chicago); David W. Boykin, Professor and Chair of Chemistry, Georgia State University, October 10, 1991 (Boykin/Georgia State); Jeremy R. Knowles, Professor of Chemistry and Biochemistry, Harvard University, October 21, 1991 (Knowles/Harvard); Jerry B. Wilhelmy, Fellow, Los Alamos National Laboratory, October 18, 1991 (Wilhelmy/Los Alamos); Elmer O. Schlemper, Professor and Chair of Chemistry, College of Arts and Science, University of Missouri-Columbia, October 22, 1991 (Schlemper/Univ. MO.); Gary J. Ehrhardt, Ph.D., Senior Research Scientist, Radioisotope Applications, Research Reactor Facility, University of Missouri-Columbia, October 24, 1991 (Ehrhardt/Univ. MO.); Dr. Silvia S. Jurisson, Assistant Professor of Chemistry, College of Arts and Science, University of Missouri-Columbia, undated (Jurisson/Univ. MO.); Volkert/Univ. MO.; George W. Kabalka, Ph.D., Professor of Chemistry, Director of Basic Research, University of Tennessee Biomedical Imaging Center, October 24, 1991 (Kabalka/Univ. Tenn.); Laurence H. Hurley, Ph.D., Professor of Drug Design, College of Pharmacy, University of Texas, Austin, October 25, 1991 (Hurley/Univ. Tex.); and W.W. Cleland, Professor of Biochemistry and Chemical Science, Institute for Enzyme Research, University of Wisconsin-Madison, October 16, 1991 (Cleland/Univ. Wisc.)

As an example of limited supplies and production, one commenter cited two domestic producers of stable life science isotopes that, together, are experiencing difficulties in meeting the demands for certain of the Products on schedules that meet the users' needs. Comment of

Schoeller/Univ. Chicago. The life science isotope markets currently experiencing serious supply shortages include those for isotopes of Oxygen, which are important in nuclear medicine, scientific research and clinical applications. Researchers and other users reported shortages and backorders, sometimes of a year or longer, that caused or are threatening to cause delays in scheduled research, together with significant rises in price. Foreign suppliers are said to have been unreliable or unable to furnish isotopes at the higher levels of enrichment required by some users. Comments of Schoeller/Univ. Chicago; Costa/UC-Santa Cruz; Knowles/Harvard; Oldfield/Univ. Ill.; Albert S. Mildvan, M.D., Professor of Biological Chemistry and Chemistry, the Johns Hopkins University School of Medicine, October 9, 1991 (Mildvan/Johns Hopkins); Delany/LA. State; John W. Kozarich, Professor of Chemistry and Biochemistry, University of Maryland, October 21, 1991 (Kozarich/Univ. MD.); Debra Dunaway-Mariano, Professor of Chemistry and Biochemistry, University of Maryland, October 21, 1991 (Dunaway-Mariano/Univ. MD.); Cleland/Univ. Wisc.

In certain Product markets, and especially where little competition was reported, prices were said also to be high, and sometimes considerably higher than prices charged by DOE. For example, commenters have been quoted or charged such prices by the Petitioner for some stable isotope Products to be used as cyclotron target material for the accelerator production of Fluorine-18 used in PET and in agricultural research and other biomedical studies. These commenters viewed these prices as detrimental or potentially detrimental to or prohibitive of research. Comments of Philip G. Williams, Staff Scientist, National Tritium Labeling Facility, Lawrence Berkeley Laboratory, October 24, 1991 (Williams/LBL); Atcher/Argonne; J.F. Power, Research Leader, U.S.D.A. Agricultural Research Service, Northern Plains Areas Soil and Water Conservation Research Unit, University of Nebraska, Lincoln, October 10, 1991 (Power/U.S.D.A.); DeLany/LA. State.

Previous shortages in Carbon-13 supplies may have been alleviated by the entry of a second supplier into the market (DOE does not produce Carbon-13 at this time), only to be replaced by uncertainty of supply and high costs of Oxygen-17 and Oxygen-18. Comments of Cleland/Univ. Wisc.; Brenna/Cornell. Fluctuations in the availability of enriched Oxygen-18 water, with attendant price instabilities, were cited as but one unsettling example from the history of stable isotope production in the United States, a situation to which DOE is asserted to have contributed through its withdrawal activities. Comment of Wolf/Brookhaven. Another commenter described the private sector as not having been a reliable source for enriched stable isotope materials in the past. Comment of Hurley/Univ. Tex.

Slowness in delivery of isotopes, such as Oxygen-17 and Oxygen-18, was cited as delaying research projects, and intervals of up to a year or longer between date of order and anticipated date of delivery were reported to have been quoted by suppliers, including the Petitioner, to users or potential users. Comments of Atcher/Argonne; Costa/UC-Santa Cruz; Schoeller/Univ. Chicago; Beck/Univ. Chicago; Boykin/Georgia State; Oldfield/Univ. Ill.; Bray/LA. State; Goldberg/Univ. MN.; Graham A.J. Worthy, Assistant Professor of Marine Mammalogy, Texas A&M University at Galveston, October 28, 1991 (Worthy/Tex. A&M). Suppliers, including the Petitioner, are reported to have been unable to provide certain Products upon request and/or to have admitted to inquirers that they did not have certain Products available and could not predict with certainty when they would have supplies available. Comments of Mildvan/Johns Hopkins; DeLany/LA. State; Beck/Univ. Chicago; Brenna/Cornell; Bray/LA State; Worthy/Tex. A&M.

One commenter mentions that the prices the Petitioner quoted him for Oxygen-18 labeled water were "very competitive", but only if delivery could be made in time to serve his needs, a factor that he understood from colleagues could be an issue. In fact, the Petitioner had informed him of schedules of availability for certain enrichments extending into late 1992 and 1993 and of its 7–8 page waiting list for the material. Comment of Brenna/Cornell. Another commenter recalled colleagues' statements to the effect that they had been unable to place a confirmed order with the Petitioner for certain of the stable enriched metal isotopes advertised in the Petitioner's catalog as being available. Comment of Richard W. Hoff, Section Leader, Nuclear Chemistry Division, Lawrence Livermore National Laboratory, October 21, 1991 (Hoff/LLNL).

The commenters reporting delays or potential delays in or cancellation of ongoing, planned, or potential research projects or applications due to insufficient supplies of the stable Oxygen isotopes or erratic delivery schedules since DOE's idling of the ICON facility include: Connick/US-Berkeley (DOE-Basic Energy Research-funded experiments); Ken Nagy, Professor and Co-Chair, Department of Biology, University of California, Los Angeles (doubly-labeled Oxygen-18 water studies), October 17, 1991 (Nagy/UCLA); Ortiz/US-San Francisco (experiments critical to research on approaches to anti-HIV agents and antifungal drugs); Costa/US-Santa Cruz (NIH-funded research on free-ranging energetics of bottlenose dolphins); Schoeller/Univ. Chicago (NIH-funded research); Beck/Univ. Chicago (list attached of on-going and planned research and training initiatives dependent upon the University of Chicago, Radiology Department's ability to continue Fluorine-18 production on a predictable schedule); Brenna/Cornell (nutritional science studies); Mildvan/Johns Hopkins (biomedical research); Williams/LBL (collaborative project involving the manufacture of tritiated Oxygen-17 water with high abundances of the Hydrogen and Oxygen isotopes); Robert G. Griffin, Professor of Chemistry and Associate Director, Francis Bitter National Magnet Laboratory, Massachusetts Institute of Technology (high-temperature superconductor studies), October 21, 1991 (Griffin/MIT); Goldberg/Univ. MN. (NIH-funded work). Two of the commenters told of applying for NIH funding of mutual nutritional research. During the grant application process, long delivery schedules coupled with continually rising prices for Oxygen-18 labeled water made the project underfunded by the time the grant was awarded and necessitated a request to NIH for additional funds. Comments of Bray/LA. State; DeLany/LA. State.

Several of the commenters viewed the supply shortages, high prices, and confusion in the Oxygen isotope market as heightened by, if not the direct result of, DOE's withdrawal from production and distribution. Comments of Cleland/Univ. Wisc.; Wolf/Brookhaven; Connick/UC-Berkeley; Knowles/Harvard; Mildvan/Johns Hopkins; DeLany/LA. State; Kozarich/Univ. MD.; Dunaway-Mariano/Univ. MD.; Goldberg/Univ. MN.; Atcher/Soc. Nuc. Med. The most dramatic rise in prices for several of the Products was reported to have occurred after DOE ceased operation of the ICON Facility. For example, one commenter indicated that the Petitioner's prices for Oxygen-18 water rose from $70 a gram in July 1989 to $89.50/gram in July 1990, and that, by September 1991 (the date of the comment), the material was available only from a distributor other than the

Petitioner, in strictly limited quantities, and at higher prices, *e.g.*, a single 25/gram batch at a price approaching $180/gram. The Petitioner advised the commenter that a shipment could not be expected until May or June of 1992, with a 25/gram limitation and a price approaching $130/gram. The commenter knew that some individuals were getting water from Russia, but that that supply, too, was limited. Comment of Wolf/Brookhaven. Other instances were cited to illustrate that U.S. research efforts have suffered in the past due to DOE's relinquishment of its role as supplier. Comments of Subramanian/Soc. Nuc. Med.; Atcher/Argonne.

Some of the commenters discussed their experiences with the quality of the Petitioner's stable isotopes, including some of the Products, and sometimes compared their quality with similar isotopes produced by DOE. One user reported purchasing Oxygen-18 water of excellent quality from DOE until DOE discontinued distribution, and, afterward, purchasing from the Petitioner a lower-quality material that had to be redistilled each time it was received. Comment of Goldberg/Univ. MN. In another case, the percentage of enrichment of certain stable isotopes sold by the Petitioner seemed to the user to be lower than those supplied by DOE, prompting the commenter to question whether DOE wanted nuclear medicine researchers to use inferior products in their work. Comment of Subramanian/Soc.Nuc.Med. Still another comment on quality of materials was provided by researchers who use enriched stable isotopes to produce radioactive isotopes for preparation of therapeutic radiopharmaceuticals used in the treatment of cancer, arthritis, and other diseases. Several of the radiopharmaceuticals are currently in human clinical trials sponsored by U.S. companies. In one case, an enriched stable isotope of an unspecified element was purchased from the Petitioner and compared to the similar material obtained from DOE. Petitioner's material was found to be unsuitable for the intended use due to its production of much higher levels of long-lived radionuclidic impurities. Thus, one of the researchers stated, the Petitioner's mateial did not have the purity of its DOE counterpart, regardless of the claimed specifications. A second researcher added "(I)n this case at least (and who knows how many others) * * * (the Petitioner) was unable to match the quality of the DOE material." Comments of Ehrhardt/Univ. MO.; Alan R. Ketring, Group Leader, Radioisotope Applications Group, University of Missouri Research Reactor Facility, October 24, 1991 (Ketring/Univ. MO.). Another commenter reported a somewhat similar experience with an enriched stable isotope purchased from the Petitioner for use in clinical studies, although the isotope, Samarium–152, is not the subject of the Petition. Comment of Volkert/Univ. Mo. Other commenters reported that they are very concerned about the purity of a certain (unspecified) isotope that they are using, if produced by the Petitioner, or that the technical specifications of the Petitioner's enriched isotopes were often below those provided by DOE. Comments of Frank Spillers, Director of Discovery Development, Texas Operations, Dow U.S.A., October 24, 1991 (Spillers/DOW); Atcher/Argonne. Finally, a commenter added that, for some materials, the enrichment factors available from the Petitioner did not match those available from DOE, and that his organization had also experienced difficulties with the purity and identity of some of the Petitioner's enriched stable materials. He concluded that the Petitioner had yet to establish a track record of product purity and consistency similar to that of DOE's facilities. Comments of Carni/DOW.

B. Dependability of Market Supplies

Continuity of private-sector production and/or distribution has been problematic for researchers and isotope users in certain instances and is a primary concern in some Product markets, *e.g.*, specific stable isotopes used in nuclear medicine and life science studies. As previously indicated, shortages in supplies of different isotopes have occurred at different times and for different reasons, and a number of the commenters view the continuing, uninterrupted availability of stable isotopes necessary for research and application as potentially threatened, if DOE withdraws from the markets. The reasons mentioned as causes for concerns about potential future supply interruptions include: (1) The inability of or a lack of interest on the part of private industry to timely meet researchers' needs, such as requirements for small or especially large volumes of materials or special formulations at reasonable prices (Comments of Power/U.S.D.A.; Y.Y. Chu, Staff Scientist, *et al.*, commenting as individuals, Brookhaven National Laboratory, undated letter (Chu et al./Brookhaven); Amos L. Hopkins, Ph.D., Department of Anatomy, Case Western Reserve University, October 25, 1991 (Hopkins/Case Western); Poppe/LLNL; Brian Fry, Associate Scientist, Marine Biological Laboratory, Woods Hole, Massachusetts, October 17, 1991 (Fry/Woods Hole); Subraminian/Soc, Nuc. Med.; Ivor L. Preiss, Professor of Chemistry, Nuclear Engineering, and Engineering Physics, Rensselaer Polytechnic Institute, October 21, 1991 (Preiss/Rensselaer); Alfred G. Redfield, Professor of Biochemistry and Physics, Brandeis University, October 10, 1991 (Redfield/Brandeis); (2) Dependence on foreign production (Comments of Spillers/DOW; Baumstark/Georgia State; DeLany/LA. State; Wilhelmy/Los Alamos; Ketring/Univ. MO.; Jurisson/Univ. MO.; Ehrhardt/Univ. MO.); (3) The inability of private-sector suppliers to respond to varying needs and increasing numbers of users in the research community or to new applications (Comments of Bray/LA. State;Volkert/Univ. MO.; Joseph R. Peterson, Professor of Chemistry, University of Tennessee, Knoxville, October 22, 1991 (Peterson/Univ. Tenn.); Kabalka/Univ. Tenn.); and (4) A lack, or potential for lack of effective competition in the markets after a DOE withdrawal (Comments of Atcher/Argonne; Costa/UC-Santa Cruz; Palko/Reuters-Stokes; Oldfield/Univ. Ill.; Subramanian/Soc. Nuc. Med.); Mitsuo Niki, Senior Vice President, Niki Glass Company, Ltd., October 25, 1991 (Niki Glass); Kenneth Kwong, Phd.D., MGH–NMR Center, Massachusetts General Hospital-Harvard Medical School, undated letter (Kwong/Mass. Gen-Harvard); Worthy/Tex. A&M.

Some commenters noted the differences between the Petitioner's assertions of its ability and its actual ability to meet or provide supplies in response to market demands. Comments of Costa/UC-Santa Cruz; Atcher/Argonne; Knowles/Harvard; Mildvan/Johns Hopkins; Schoeller, Univ. Chicago; Brenna/Cornell; Hoff/LLNL (colleagues have reported being unable to place a confirmed order with Petitioner for certain enriched stable metal isotopes advertised in Petitioner's catalog as available); DeLany/LA. State. A commenter suggested that it might be useful for DOE to seek a written contractual commitment from the Petitioner as to what quantities, prices, deliveries, and enrichments of stable isotopes its proposes to have available, noting the case with which a commercial supplier can promise anything, justifying its current lack of production on unfair competition. Comment of Oldfield/Univ. Ill. Concerns regarding the potential for future supply shortages were heightened where the commenter thought that a domestic or foreign source might intend to be able to manipulate certain Product markets for profit or other reasons in a manner that

would put U.S. research and use as a disadvantage. The Petitioner's status as a wholly-owned subsidiary of a Japanese company also was sometimes referred to in this connection. (The Petitioner is a wholly-owned subsidiary of Matheson Gas Products, Inc., which is a wholly-owned subsidiary of Nippon Sanso KK, a Japanese company. Supplement to the Petition, p.5.) Comments of David B. Curtis, Santa Fe, New Mexico, October 28, 1991; Chu *et al.*/Brookhaven; Hopkins/Case Western; Spillers/DOW; Carni/DOW; Poppe/LLNL; Kwong/Mass. Gen.-Harvard; Subaramanian, Soc. Nuc. Med.; Niki Glass; Worthy/Tex. A&M.

Concerns were expressed also about the potentially adverse effect a DOE withdrawal from the markets for the Products would have on other stable isotope markets or on DOE production and distribution of the Products to DOE facilities. For example, one commenter is concerned that the Petition might be interpreted broadly to include other stable isotopes marketed by the Petitioner, *e.g.* those referred to in the Petitioner's catalog as "metal stable isotopes", a concern based upon the fact that only the United States (DOE) and the Soviet Union are producers. Thus, a DOE withdrawal from production would leave only an undependable source to meet market demands. Comment of Steven W. Yates, Professor, Department of Chemistry, University of Kentucky and Vice Chairman, Division of Nuclear Chemistry and Technology, American Chemical Society, October 18, 1991 (Yates/Am. Chem. Soc.). Another commenter felt that granting the Petition might be construed as a precedent for extension by Petitioner or another firm into a larger portion of the isotope production and distribution market, in the absence of effective competition and with abdication of the U.S. government's responsibility for producing and distributing the types of isotopes required for research and application by *bona fide* scientists and medical practitioners. Comment of Peterson/Univ. Tenn. Still other commenters believed that granting the Petition would severely impact DOE's capabilities for product development and researching of new applications using the enriched stable isotopes of the noble gases and that curtailment of DOE production capability could force DOE facilities to turn to the commercial market for supplies, an alternative source that the commenters' limited experience suggested could not meet the demand readily or at prices comparable to those charged by DOE. Poppe/LLNL. Another commenter felt that DOE's withdrawal as a supplier of enriched stable isotopes would inject into a fragile, but important market an uncertainty and instability concerning quantity and quality of supplies that could jeopardize many current and future research programs unnecessarily. Comment of Slayton A. Evans, Jr., Professor of Chemisty, University of North Carolina at Chapel Hill, October 22, 1991 (Evans/NC-Chapel Hill).

IV. Statutory Authority and Policy: The Role of the United States Government in Atomic Energy Markets

The Atomic Energy Act (the Act) establishes the United States Government as the initially-exclusive domestic developer and user of, and practitioner, in atomic energy. The Act encouraged the Government, acting through the Atomic Energy Commission (AEC), to undertake activities that could lead to the potential development of future commercial, civilian markets for atomic energy products and services, but it did not establish a time by which markets were to be developed, procedures or criteria for withdrawal decisions, or a definition of the extent to which there should be withdrawals. Decisions concerning the atomic energy markets were left, instead, to the expertise and discretion of the AEC and its successor agencies, the Energy Research and Development Administration (ERDA) and, later, DOE, with the caveat that their activities should conform to the U.S. policy of strengthening free competition in private enterprise.

In discharging its mission of developing atomic energy so as to make the maximum contribution to the general welfare, DOE used its authorities under sections 31–33 of the Atomic Energy Act to conduct or sponsor research and pioneer conception, construction or formulation, and use of equipment and materials that gave rise to commercial enterprises based upon the use of radioactive and stable isotopes. The multi-billion dollar (annual) U.S. nuclear medicine industry is an example of a development built upon DOE's isotope innovations and continuing to derive benefits from ongoing research conducted by or for DOE or sponsored by DOE or other Federal agencies, frequently using DOE facilities or materials. Stable isotopes were developed, along with radioisotopes, for use, initially, in DOE's own research and applications and then for supply to private users to whom atomic-energy-based technologies for peaceful uses had been transferred. Today stable isotopes continue to be used frequently as target material in the production of radioisotopes. For example, Oxygen-18 enriched water is used in the production of Fluorine-18, a radionuclide that is especially important in contemporary nuclear medicine research and applications.

DOE's authority for the production and distribution of stable isotopes is Section 161m of the Atomic Energy Act, which authorizes it to:

> (E)nter into agreements with persons licensed under Section 103, 104, 53a.(4), or 63a.(4) * * * (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activity.

Section 103 is the authority for licensing of utilization or production facilities used for industrial or commercial purposes; section 104 is the authority for issuing licenses to persons for utilization facilities to be used in medical therapy and in research and development in areas within DOE's jurisdiction. Section 53a.(4) is the authority for licensing the domestic distribution of special nuclear material for other uses determined to be appropriate to carry out the purposes of the Atomic Energy Act; section 63a.(4) is the authority for licensing the domestic distribution of source material for other approved uses as an aid to science and industry. These authorities permit DOE to provide stable isotopes and related services to a wide variety of holders of licenses for the civilian possession, handling, and use of atomic energy for research and development and medical, commercial, and industrial applications.

The historical AEC/ERDA/DOE approach to the isotope markets can be summarized as a series of withdrawals and reentries designed to address the agencies' contemporary assessments of the strength of private sector suppliers in meeting demands in the manner required to encourage further industrial and research developments. Although subsequently almost unused, the AEC Policy Statement was formulated in 1965 in an effort to provide a framework within which withdrawal and reentry decisions could be made with respect to radioisotope markets within a formal procedural framework. No similar process was established for stable isotope markets. However, withdrawals and reentries have taken place on a

case-by-case basis, conditioned upon the continued ability of the private sector to meet market demands at reasonable prices and on reasonable schedules. Petition, Exhibits 1 and 2.

V. Findings and Proposed Denial of Petition

After consideration of the record and within the context of the Act's comprehensive strategy for the development of atomic energy and the AEC/ERDA/DOE tradition of responding to market conditions in a manner that strengthens free competition, DOE rejects the Petitioner's contention that DOE must withdraw from stable isotope markets, when such markets are occupied by a single private sector supplier or a limited number of such suppliers and without regard to market dislocations that have developed, or may be developing, due to the inability or lack of incentive or initiative of such suppliers to meet demands. At this time, the ability of users to obtain stable-isotopic materials for continued nuclear medicine research and development and life-science and environmental studies, including for the transfer of technology to practical or clinical application, is of particular concern to DOE in connection with the Petition.

The Petitioner contends that stable isotopes, other than "surplus" products, cannot be produced by DOE and sold on commercial markets and that, even where surplus isotopes are involved, sales must be in bulk, as opposed to sales in small, retail quantities. First, in responding to these issues, DOE's statutory mission to foster and encourage the development and use of atomic energy products for peaceful purposes belies the Petitioner's contention that the agency is confined to sales of only surplus products. Quite simply put, the Act's provisions for disposition of surplus materials cannot be read in a way that limits the Agency's vital role in encouraging and supporting the maximum scientific and industrial progress in atomic energy uses involving isotopes. The Act, in this respect, makes no distinction in Sections 31–33 and 161m between bulk sales and sales in small quantities or at retail. Consequently, DOE has the discretion to determine which methods of sale will best serve to enable it to carry out its mission under the Act in any particular case.

Second, although the Petitioner gives no weight to Congressional enactments establishing the Revolving Fund which provides the financial support for DOE's isotope production and distribution activities, DOE finds it significant that various House Reports accompanying the annual Energy and Water Development Appropriations characterize the program as providing—

> (R)adioactive and stable isotope products and associated services to a wide and varied domestic and international market. These materials and services are produced, processed and provided through the utilization of DOE facilities and scientific capabilities which exist to satisfy other DOE research and production missions. Ultimate applications of isotope products include medical research and health care, industrial research and manufacturing, agriculture, food preservation, education, and national defense. Prices for the products are established to recover program costs while revenues realized from the sales are retained by the program as an offset to costs and investments in processes, improvements, unique equipment, and isotope research. H.R. Rep. No. 536, 101st Cong., 2nd Sess. 105–105 (1990).

Further,

> In keeping with government policies and practices, prices are set for products offered under this program in a manner that will not discourage the use of the products nor the development of domestic sources of supply independent of DOE. H.R. Rep. No. 75, 102d Cong., 1st Sess. 101 (1991)

This is not a description of an activity that disposes merely of inconveniently-produced surplus materials resulting from other atomic-energy operations. Rather, it describes an activity that takes advantage of DOE's multi-purpose capabilities to produce materials used for or in association with atomic energy and, specifically, which sells isotopes in quantities that meet specific demands. By doing so, DOE has played and plays the vital role ascribed to it in the Report. The Revolving Fund legislation reflects DOE's mission as authorized by the Act with respect to isotope production and distribution and reaffirms the intent of Congress that this mission should continue to be the responsibility of DOE.

In view of DOE's statutory responsibility for encouraging and promoting research in, and development and use of atomic energy for peaceful purposes, the evidence in the record as a whole indicates that, should DOE withdraw from distribution of stable isotopes to commercial markets and other Federal agencies as requested by the Petitioner, important research, medical, and industrial uses involving atomic energy may be adversely impacted through the limitation, or further limitation, of timely and cost-effective availability of essential stable and radioactive isotopes and by the interjection of additional uncertainties into research and production schedules and instabilities into markets. On the basis of specific evidence of record, described and discussed in detail above, DOE finds that:

- Overall effective competition, in the meaning used in the Act and the AEC Policy Statement, has not been achieved and continued on a long-term basis in the markets for one or more of the Products;
- One or more of the Products are not, or at times have not been reasonably available from active commercial sources, including the Petitioner, in quantities or, in some instances, qualities necessary for intended uses; and
- Prices for one or more commercially-produced Products are not or, from time to time, have not been, or, in the future, may not be consistent with the encouragement of research and development, practical application, and use.

The comments note the past and current inability and question the future ability of the Petitioner and any other active producers/distributors of the Products to meet future demands over time, at prices and on schedules conducive to the encouragement and continued conduct of interests and enterprises that depend upon the use of stable isotopes and the radioactive isotopes produced from them. The suggestions are based upon incidents from past history and current conditions of unavailability of certain of the Products. Based on past experience, DOE believes that its removal from the actual or potential production and distribution of the Products could aggravate market instability, rather than stimulate competition and assure adequate and reasonable future supplies.

Therefore, having considered the Petitioner's request and the materials timely received into the public record, DOE has concluded that the evidence available does not permit it to make the Policy Statement findings required to support the granting of the Petition. Further, DOE has concluded that it should conduct and support the production and distribution of stable isotopes, including the Products, and provide associated services as it deems necessary, when there is evidence that private industry is unable, unwilling, or, for whatever reasons, is not carrying out such work adequately or where DOE determines that its direct effort is necessary in the interest of fostering and promoting the Federal civilian atomic energy program. Such operations will require that DOE maintain considerable flexibility in decisionmaking with respect to planning, modifying, and redirecting facilities and personnel in

isotope-production and service activities and be able to bring its discretion and expertise to bear in effectively and efficiently responding to the needs of the domestic and international research, medical, commercial, and industrial communities that rely upon a steady and ample supply of stable isotopes, including the Products and radioisotopes derived from them, for their work. The need for flexibility today is especially great, not only due to rapidly-increasing demands for certain isotopes and radioisotopes, but because a reconfiguration of the national weapons complex hosting many of the facilities with isotope production capability is in progress.

Therefore, for all of the reasons above, DOE proposes to deny the Petition.

VI. Opportunity for Public Comment

DOE will accept post-publication comments until April 1, 1992. The proposed denial of the Petition will become final April 16, 1992, if the agency takes no further action in response to comments.

Notice will be given of any further action deemed to be warranted. The record will continue to be available in DOE's Freedom of Information Reading Room until the close of the post-publication comment period.

Dated at Washington, DC, this 14th day of February, 1992.

William H. Young,

Assistant Secretary for Nuclear Energy.

[FR Doc. 92-4800 Filed 2-28-92; 8:45 am]

BILLING CODE: 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FLR-4110-5]

State and Local Assistance; Grants for State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment.

SUMMARY: This notice sets forth the State allotments of fiscal year (FY) 1992 funding for the State Revolving Fund capitalization grants program under the Clean Water Act (CWA). On October 28, 1991 in Public Law No. 102-139 Congress appropriated $1,948,500,000 in funding for the State Revolving Fund capitalization grants program (Title VI). The 1992 Dire Emergency Supplemental Appropriation Act, Public Law No. 102-229, authorized up to one-half of one percentum of Title VI funds under the Clean Water Act to be reserved for making grants to Indian Tribes and Alaska Native Villages for wastewater treatment facilities. The State funds are allotted in accordance with the table in section 205(c)(3) of the Act, as amended by Public Law No. 100-4.

Through promulgation of this notice the requirements of the Act are fulfilled and the public is notified of the amounts made available to the States to capitalize the State water pollution control revolving funds. It also provides notice that one-half of one percentum or $9,743,000 is reserved for grants to Indian Tribes and Alaska Native Villages, and that grants from this reservation will be made to fund projects on the 1990 Indian Project Priority List.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard B. Fitch, Program Management Branch, Municipal Support Division, Office of Wastewater Enforcement and Compliance (202) 260-5858.

SUPPLEMENTARY INFORMATION: Public Law No. 102-139 appropriated $1,948,500,000 for State Revolving Fund capitalization grants under Title VI of the CWA for fiscal year 1992. Section 604(a) of the Act requires that funds appropriated for Title VI for fiscal years 1987 to 1990 be allotted in accordance with the table in section 205(c)(3) of the Act. Congress has given the Agency no instruction regarding the allotment of FY 1992 funds. In the absence of Congressional action, the Agency will allot the fiscal year 1992 funds in accordance with the table in section 205(c)(3) except as described below.

Indian Tribes Adjustment

The 1992 Dire Emergency Supplemental Appropriation Act, Public Law No. 102-229, authorized the Administrator to reserve up to one half of one percentum of fiscal year 1992 Title VI funds for making grants to Indian Tribes and Alaska Native Villages for construction of wastewater treatment facilities. The Administrator has elected to reserve these funds to be administered under the Indian Set-Aside Program authorized by section 518(c) of the Clean Water Act. These funds will be allotted to the Indian Tribes and Alaska Native Villages based on the 1990 Indian Set-Aside Project Priority List published in the **Federal Register** December 21, 1990. Projects were ranked on this National Priority List based on water quality and public health criteria.

Trust Territory Adjustment

In Public Law No. 99-658, Congress approved a Compact of Free Association for the Trust Territories' members. Two entities, the Federated States of Micronesia and the Republic of the Marshall Islands have implemented Compacts and are no longer eligible for grants under Title VI. At the effective date of this allotment the Republic of Palau has yet to implement a Compact of Free Association, and, under Public Law No. 99-239, section 105(h)(2), remains eligible for Title VI grants. Funds that otherwise would have been allotted to the Federated States of Micronesia and the Republic of the Marshall Islands are redistributed to the States and Territories by proportionally increasing their respective shares of the appropriation as shown in the column titled "Allotment Formula After Trust Territory Adjustments." The actual allotments resulting from the adjusted allotment shares are shown in the column titled "FY 1992 State Allotment." The table at the end of this notice lists the amount of funding made available to each State. These funds have been issued by the EPA Comptroller and are available for obligation until September 30, 1993. Grants from the allotments may be awarded as of the date that the funds were issued to the Regional Administrators by the Comptroller of EPA.

Dated: February 24, 1992.

William K. Reilly,

Administrator.

State	Allotment formula	Allotment formula after trust terr. adjustments	FY 1992 state allotment
Alabama	0.011309	0.011320	$21,945,800
Alaska	0.006053	0.006059	11,746,200
Arizona	0.006831	0.006837	13,256,000
Arkansas	0.006616	0.006622	12,838,700
California	0.072333	0.072400	140,366,400
Colorado	0.008090	0.008098	15,699,100
Connecticut	0.012390	0.012402	24,043,500

State	Allotment formula	Allotment formula after trust terr. adjustments	FY 1992 state allotment
Delaware	0.004965	0.004970	9,634,900
Dist. of Columbia	0.004965	0.004970	9,634,900
Florida	0.034139	0.034171	66,248,700
Georgia	0.017100	0.017116	33,183,500
Hawaii	0.007833	0.007840	15,200,400
Idaho	0.004965	0.004970	9,634,900
Illinois	0.045741	0.045783	88,763,100
Indiana	0.024374	0.024397	47,299,200
Iowa	0.013688	0.013701	26,562,400
Kansas	0.009129	0.009137	17,715,400
Kentucky	0.012872	0.012884	24,978,900
Louisiana	0.011118	0.011128	21,575,100
Maine	0.007829	0.007836	15,192,600
Maryland	0.024461	0.024484	47,468,000
Massachusetts	0.034338	0.034370	66,634,900
Michigan	0.043487	0.043527	84,389,100
Minnesota	0.018589	0.018606	36,073,000
Mississippi	0.009112	0.009120	17,682,400
Missouri	0.028037	0.028063	54,407,400
Montana	0.004965	0.004970	9,634,900
Nebraska	0.005173	0.005178	10,038,500
Nevada	0.004965	0.004970	9,634,900
New Hampshire	0.010107	0.010116	19,613,200
New Jersey	0.041329	0.041367	80,201,300
New Mexico	0.004965	0.004970	9,634,900
New York	0.111632	0.111736	216,628,000
North Carolina	0.018253	0.018270	35,421,000
North Dakota	0.004965	0.004970	9,634,900
Ohio	0.056936	0.056989	110,487,600
Oklahoma	0.008171	0.008179	15,856,300
Oregon	0.011425	0.011436	22,170,900
Pennsylvania	0.040062	0.040099	77,742,600
Rhode Island	0.006791	0.006797	13,178,300
South Carolina	0.010361	0.010371	20,106,100
South Dakota	0.004965	0.004970	9,634,900
Tennessee	0.014692	0.014706	28,510,700
Texas	0.046226	0.046269	89,704,200
Utah	0.005329	0.005334	10,341,200
Vermont	0.004965	0.004970	9,634,900
Virginia	0.020698	0.020717	40,165,700
Washington	0.017588	0.017604	34,130,500
West Virginia	0.015766	0.015781	30,594,800
Wisconsin	0.027342	0.027367	53,058,700
Wyoming	0.004965	0.004970	9,634,900
American Samoa	0.000908	0.000909	1,762,000
Guam	0.000657	0.000658	1,274,900
Northern Marianas	0.000422	0.000422	818,900
Puerto Rico	0.013191	0.013203	25,597,900
Pacific Trust Terr.	0.001295	0.000367	712,200
Virgin Islands	0.000527	0.000527	1,022,700
Subtotal	1.000000	1.000000	1,938,757,000
Indian Set-aside			9,743,000
Total			1,948,500,000

[FR Doc. 92-4774 Filed 2-28-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4110-7]

Office of Administrative Law Judges; Temporary Closing of Office of the Hearing Clerk

Notice is hereby given that U.S. Environmental Protection Agency's Office of the Hearing Clerk, 401 M Street, SW., Washington, DC will be temporarily closed to the general public for inspection and reproduction of documents from March 2, 1992 until March 16, 1992. The Hearing Clerk will receive filings as usual. The office is undergoing renovations and we apologize for any inconvenience. For further information please contact Bessie L. Hammiel, (202) 260-4865.

Dated: February 24, 1992.

Henry B. Frazier III,

Chief Administrative Law Judge.

[FR Doc. 92-4776 Filed 2-28-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-62116; FRL-4048-6]

Accredited Training Programs Under The Asbestos Hazard Emergency Response Act (AHERA); National Directory of AHERA Accredited Courses (NDAAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Effective February 28, 1992, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The February 28, 1992, national directory, which supersedes the version released on November 28, 1991,

may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: NDAAC Clearinghouse, c/o ATLIS Federal Services, 6011 Executive Blvd., Rockville, MD 20852, Telephone: (301) 984–1929.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW, Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, contractors who inspect or prepare management plans, or design or conduct response actions with respect to friable asbestos-containing materials in schools, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991 (56 FR 43064). EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

Dated: February 20, 1992.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–4781 Filed 2–28–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59303; FRL 4051–3]

Certain Chemical; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 92–3 March 13, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS–59303)" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. L–100, Washington, DC 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 92–3

Close of Review Period. March 27, 1992.

Manufacturer. Confidential.

Chemical. (S) Lubricating oils, used, residues.

Use/Production. (S) Asphalt extender. Prod. range: Confidential.

Toxicity Data. Mutagenicity: negative.

Dated: February 20, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–4788 Filed 2–28–92 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59933; FRL 4050–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 7 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–96, February 19, 1992.

Y 92–97, February 23, 1992.

Y 92–98, 92–99, 92–100, February 25, 1992.

Y 92–101, February 26, 1992.

Y 92–102, March 3, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-96

Manufacturer. Graphics Technology International Inc.

Chemical. (S) 4,4'-Sulfonyldiphenol; resorcinol diglycidyl ether; resorcinol.

Use/Production. (S) Vesicular diazo microfilm. Prod. range: 23,550–118,000.

Y 92-97

Manufacturer. Confidential.

Chemical. (G) Polyester of hexanediol, trimethyl propane and mixed aliphatic acids.

Use/Production. (G) Coatings. Prod. range: Confidential.

Y 92-98

Manufacturer. C.J. Osborn Div. of Suvar Corporation.

Chemical. (G) Tall oil fatty acid based alkyd.

Use/Production. (S) Pigmented coatings. Prod. range: Confidential.

Y 92-99

Manufacturer. Henkel Corporation.

Chemical. (S) Azelaic acid, adipic acid, and phthalic anhydride, polymer with propane glycol-hydrogenated coco fatty acid ester.

Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 1,000,000–2,000,000 kg/yr.

Y 92-100

Importer. MTC America, Inc..

Chemical. (G) Styrene copolymer.

Use/Import. (S) Thermoplastic polymer compound. Import range: Confidential.

Y 92-101

Importer. The P. D. George Company.

Chemical. (G) Ester of styrene/alkyl alcohol copolymer.

Use/Import. (S) Binder in metal coatings. Import range: Confidential.

Y 92-102

Manufacturer. Confidential.

Chemical. (G) Polyamide.

Use/Production. (G) Printing ink resin. Prod. range: Confidential.

Dated: February 20, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-4789 Filed 2-28-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Program (October 1, 1991-December 31, 1991)

Summary Report

Total Number of Sponsored Events	9
Total Number of Sponsoring Organizations	9
Total Number of Different Commissioners/Employees Attending	7
Total Amount of Reimbursement Expected:	
Transportation	$3,300.50
Subsistence	1,687.86
Other Expenses	328.62
Total	5,316.98

Individual Event Report

Sponsoring Organization: Minnesota Broadcasters Association, 3517 Raleigh Avenue, P.O. Box 16030, St. Louis Park, MN 55416
Date of the Event: October 10–11, 1991
Description of the Event: MBA Convention, Austin, Minnesota
Commissioners Attending: (1) Commissioner James H. Quello
Other Employees Attending: None
Amount of Reimbursement:

Transportation	$312.00
Subsistence	177.88
Other Expenses	111.61
Total	601.49

Sponsoring Organization: American Mobile TeleCommunications Association, 1835 K Street, NW., Suite 203, Washington, DC 20006
Date of the Event: October 14–15, 1991
Description of the Event: SMR/Private Carrier Management Conference, Chicago, Illinois
Commissioners Attending: None
Other Employees Attending: Ralph A. Haller, Chief, Private Radio Bureau
Amount of Reimbursement:

Transportation	$366.00
Subsistence	143.73
Other Expenses	36.00
Total	545.73

Sponsoring Organization: West Virginia Cable Television Association, 1 Bridge Place, 10 Hale Street, Charleston, WV 25301
Date of the Event: October 16, 1991
Description of the Event: WVCTA Fall Show, White Sulphur Springs, West Virginia
Commissioners Attending: None
Other Employees Attending: Robert Corn-Revere, Legal Adviser, Com. Quello
Amount of Reimbursement:

Transportation	$262.00
Subsistence	90.55
Other Expenses	26.50
Total	379.05

Sponsoring Organization: Forest Industries Telecommunications, 871 Country Club Road, Suite A, Eugene, Oregon 97401
Date of the Event: October 24–26, 1991
Description of the Event: FIT's 1991 Annual Board of Directors and Membership Meeting, Eugene, Oregon
Commissioners Attending: None
Other Employees Attending: Ralph A. Haller, Chief, Private Radio Bureau
Amount of Reimbursement:

Transportation	$384.00
Subsistence	240.50
Other Expenses	34.50
Total	659.00

Sponsoring Organization: EPM Communications, Incorporated, 488 East 18th Street, Brooklyn, NY 11226
Date of the Event: October 27–29, 1991
Description of the Event: 3rd Annual EPM Entertainment Marketing Conference, Los Angeles, California
Commissioners Attending: Commissioner James H. Quello
Other Employees Attending: None
Amount of Reimbursement:

Transportation	$00.00
Subsistence	180.00
Other Expenses	00.00
Total	180.00

Sponsoring Organization: Competitive Telecommunications Association, 120 Maryland Avenue, NE., Washington, DC 20002
Date of the Event: October 13–16, 1991
Description of the Event: Comptel's Fall Business Conference, Orlando, Florida
Commissioners Attending: Commissioner Ervin S. Duggan
Other Employees Attending: None
Amount of Reimbursement:

Transportation	$00.00
Subsistence	126.00
Other Expenses	00.00
Total	126.00

Sponsoring Organization: United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006
Date of the Event: November 3–6, 1991
Description of the Event: USTA's 94th Annual Convention, Honolulu, Hawaii
Commissioners Attending: None
Other Employees Attending: Linda Townsend Solheim, Chief, Office of Legislative Affairs
Amount of Reimbursement:

Transportation	$754.00
Subsistence	168.00
Other Expenses	73.16
Total	995.16

Sponsoring Organization: Global Telecommunications, 28th Floor, Center Point, 103 New Oxford Street, London WCIA IDD
Date of the Event: December 3–4, 1991
Description of the Event: Annual Conference, Berlin, Germany
Commissioners Attending: None
Other Employees Attending: Kenneth Robinson, Advisor, Chairman Sikes
Amount of Reimbursement:

Transportation	$836.50
Subsistence	195.20
Other Expenses	11.85
Total	1,043.55

Sponsoring Organization: TeleStrategies, Incorporated, 1355 Beverly Road, Suite 100, McLean, Virginia 22101
Date of the Event: December 12–13, 1991
Description of the Event: TeleStrategies "Cordless '91—West" Program, San Francisco, California
Commissioners Attending: None
Other Employees Attending: Thomas Stanley, Chief, Office of Engineering and Technology
Amount of Reimbursement:

Transportation	$386.00
Subsistence	366.00
Other Expenses	35.00
Total	787.00

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–4803 Filed 2–28–92; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Caribbean Shipowners Association; Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010979–019.
Title: Caribbean Shipowners Association.
Parties: Tropical Shipping & Construction Co., Ltd., Trailer Marine Transport Corporation, Puerto Rico Maritime Shipping Authority ("PRMSA"), Seaboard Marine, Ltd., West Indies Shipping Corporation (WISCO), Tecmarine Lines, Inc., Bernuth Lines, Ltd., Interline Connection, Inc., Kirk Line, Inc.
Synopsis: The proposed amendment would delete Trinidad and Tobago from the scope of the Agreement.

Dated: February 25, 1992.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92–4705 Filed 2–28–92; 8:45 am]
BILLING CODE 6730–01–M

Cleveland Stevedore Co./Ceres Terminals, Inc.; Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.6 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200623.
Title: Cleveland Stevedore Company/Ceres Terminals, Inc.
Parties: Cleveland Stevedore Company Ceres Terminals, Inc.
Filing Party: Christopher C. Morton, Vice President Operations, Cleveland Stevedore Company, 775 Erieside Avenue, Cleveland, Ohio 44114–1094.
Synopsis: This Agreement, filed February 20, 1991, establishes an organization known as the Port of Cleveland Terminal Association. The association's purpose is to allow the parties to consult with one another and to establish port terminal rates and charges and rules and regulations.

Dated: February 25, 1992.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92–4704 Filed 2–28–92; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review; Delay in Implementation of Proposed Supplemental Report

SUMMARY: On December 10, 1991, the Board of Governors of the Federal Reserve System published for comment the proposed addition of a supplement to the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032). The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies. The new supplement (FFIEC 002S; OMB No. 7100–0032) would collect information on assets and liabilities of a non-U.S. branch that is managed or controlled by a U.S. branch or agency of a foreign bank. The original comment period, which was scheduled to expire on January 10, 1992, was extended through January 31, 1992. The FFIEC 002S was proposed to be implemented as of March 31, 1992. In order to enable the public to prepare properly for the

implementation of the proposed supplement, the Secretary of the Board, acting pursuant to delegated authority, has decided to extend the proposed implementation date for this supplement to June 30, 1992. The final Federal Reserve System action and reporting requirements will be issued shortly.

FOR FURTHER INFORMATION CONTACT: Martha C. Bethea, Deputy Associate Director, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3181).

By order of the Secretary of the Board, acting pursuant to delegated authority for the Baord of Governors of the Federal Reserve System, February 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–4706 Filed 2–28–92; 8:45 am]

BILLING CODE 6210–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a two-day meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, March 18, 1992 and Thursday, March 19, 1992, from 9 a.m. to 4 p.m. in room 121 of the National Building Museum, 401 F St., NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the February 20 meeting, a review of an exposure draft on Accounting for Direct Loans and Loan Guarantees, a review of an exposure draft on Uses and Objectives of Federal Accounting, a brief discussion on unfunded liabilities, and a review of an exposure draft on Accounting for Tangible Property Other Than Long Term Fixed Assets of the Federal Government. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., room 302, Washington, DC 20001, or call (202) 504–3336.

Authority: Federal Advisory Committee Act. Public Law 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: February 25, 1992.

Jimmie D. Brown,

Deputy Staff Director.

[FR Doc. 92–4675 Filed 2–28–92; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Personnel Administration, Departmental Appeals Board; Statement of Organization, Functions and Delegations of Authority

I hereby delegate to the Chair, Departmental Appeals Board authority to establish the Quality Control Review Panel, within the organization of the Departmental Appeals Board, to review and issue decisions on difference cases (other than those individual cases that I choose to review) under section 408(b) of the Social Security Act, as added by section 8004 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), and in accordance with regulations of the Department of Health and Human Services implementing that law.

This delegation of authority is effective immediately. In addition, I hereby affirm and ratify any actions taken by you or any Departmental Appeals Board employee which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Dated: February 19, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–4551 Filed 2–28–92; 8:45 am]

BILLING CODE 4190–04–M

Assistant Secretary for Personnel Administration; Statement of Organization, Functions, and Delegation of Authority

Part A (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Service (DHHS) is amended to reflect a realignment of functions in the Office of the Assistant Secretary for Personnel Administration. Make the following changes to Chapter AH as last amended at 56 FR 41690 (August 22, 1991): A. Chapter AHH paragraph C. "The Office of Personnel Service," delete in its entirety and replace with the following:

C. *The Office of Personnel Services:* Directs and manages the personnel operations and services which are performed centrally at the Department level and those which are performed at the Operating Divsion level for the Office of the Secretary and for the Administration for Children and Families. Formulates and oversees the implementation of Department-wide policies, regulations and procedures concerning the Committee Management program, the Senior Executive Service program, and Schedule C and other executive personnel activities. Administers the Departmental drug testing and employee assistance program. Responsible for the functional management and training and development in the Department. Manages the HHS personnel and information security programs. Serves as HHS liaison to central management agencies for all programs and activities within the Office's functional jurisdiction. Provides the full range of operations personnel services for Headquarters staff of the Office of the Secretary and the Administration for Children and Families as well as for field positions in the Office of the Inspector General.

1. *Personnel Security and Drug Testing Program Division:* Responsible for establishing and maintaining a Department-wide personnel security program in accordance with the provisions of Executive Order (E.O.) 10450, Security Requirements for Government Employment, and U.S. Office of Personnel Management Federal Personnel Manual. Responsible for establishing and maintaining a Department-wide information security program in accordance with the provisions of E.O. 12356, National Security Information, and General Services Administration Information Security Oversight Office Directive Number 1, National Security Information formulates and oversees the implementation of Department-wide policies, regulations, and procedures governing the establishment and maintenance of an effective program to ensure that the employment and retention in employment of any Department officer or employee is clearly consistent with the efficiency of the service and the interests of the national security. Initiates requests to and receives completed reports of personnel security investigation from the U.S. OPM; reviews and evaluates the results of reports of investigation for any unfavorable information that could have

an adverse impact on the efficiency of the service and/or risks to the national security; authorizes employees to occupy certain sensitive positions based upon established guidelines; grants access to classified (national security) information based upon an identifiable need; maintains records relating to personnel suitability and security matters, levels of position sensitivity and access to classified information, and personnel security forms furnished by employees, and maintains liaison with HHS personnel security officials and officials in other Federal agencies on matters relating to the Department's personnel security program. Formulates and oversees the implementation of Department-wide policies, regulations, and procedures relating to the control and safeguarding of classified information, establishment of an effective security education program; conduct of security evaluations to ascertain the effectiveness of the Department's program, and maintains liaison with certain Department officials and other Federal agencies on matters relating to the overall classified information security program. Responsible for coordinating and overseeing the operation of the Department-wide Drug-Free Workplace Program. Formulates policies and procedures for the Department-wide drug testing program and oversees the implementation of the testing program. Schedules and receives results of drug test, coordinates follow up actions based upon positive drug tests, maintains records relating to the drug testing program, and maintains liaison with Department drug program coordinators and other officials, and with officials from other Federal agencies on matters relating to the overall Drug-Free Workplace Program.

2. *Executive Resources Management Division:* Formulates and oversees the implementation of Department-wide policies, regulations, and procedures governing the establishment, management, continuation or termination of all HHS Federal advisory committees and the appointment of members thereto; provides expert technical advise and assistance to OPDIV, STAFFDIV and agency Committee Management Officers and insures compliance with laws, regulations procedures governing committee management and serves as liaison with other Federal agencies, the Congress or other outside organizations on advisory committee matters. Formulates and oversees the implementation of Department-wide policies, regulations and procedures concerning all aspects of Senior Executive Service, and SES equivalent recruitment, staff, position establishment, compensation, award, performance management and other related personnel areas. As necessary, also provides service on these same areas as well as provides policy formulation and procedures development specifically in support of SES and SES equivalent needs in the Office of the Secretary and the Administration for Children and Families. Oversees and facilitates implementation of HHS-wide policies, regulations and procedures relating to Schedule C and other executive personnel activity. For all areas agencies (OPM, GAO). Provides technical advice and assistance on policy, legal and regulatory matters. Is the focal point for data, reports, and analyses relating to SES, SES equivalent and Schedule C and other executive personnel, such as those in Executive Level positions.

3. *Organization and Employee Development Division:* Responsible for the functional management of training and development in the Department, including policy development, guidance, and technical assistance and evaluation of all aspects of career, employee, supervisory, management, executive, and organization development. Administers Department-wide training and development programs, including the Secretary's Executive Leadership Forum, the Women's Management Training Initiative, Department level training for members of the SES, and the SES Candidate Development Program. Provides consulting services to HHS managers to promote organization development and quality improvement efforts and manages initiatives designed to improve quality of products and services. Responsible for the functional management of the Department's Employee Assistance Program (EAP). Provides leadership and direction to OPDIV and regional staffs in the development and maintenance of EAP, and develops Department-wide policies and procedures for EAP operation. Serves as HHS liaison to central management agencies on training and development and EAP programs and activities.

4. *Personnel Operations Division:* Provides secondary personnel policy as necessary for the Office of the Secretary and the Administration for Children and Families. Also provides to managers in the Office of the Secretary and the Administration for Children and Families advice and assistance in their personnel management activities including workforce planning, recruitment, selection, position management, and labor management relations. Provides a variety of services to employees in those organizations, including provision of employee assistance services, and career, retirement and benefits counseling. Provides personnel administrative services for the Office of the Secretary and the Administration for Children and Families, as well as for staff of the Office of the Inspector General in the field. Personnel administrative services include the exercise of appointing authority, position classification, awards authorization, and personnel action processing and recordkeeping. Provides training management for the Office of the Secretary. Operates the Mary E. Switzer Training Center, offering common needs training to employees based in Southwest Washington, DC.

Dated: Feburary 21, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-4676 Filed 2-28-92; 8:45 am]

BILLING CODE 4190-04-M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of an advisory committee of the National Institute of Mental Health for March 1992.

The initial review group will be performing review of applications for Federal assistance; therefore, a portion of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating conflicting schedules of the members.

Summaries of the meeting and rosters of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, Room 9-105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4333).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Clinical Subcommittee, Mental Health Special Projects Review Committee

Meeting Date: March 6, 1992.

Place: Dumont Plaza Hotel, 150 East 34th Street, New York, NY 10016.

Open: March 6, 8:30 a.m.–9 a.m.

Closed: Otherwise.

For Further Information Contact: Frances Smith, Room 9C–02 Parklawn Building, Telephone (301) 443–4968.

Dated: February 25, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–4749 Filed 2–28–92; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

[Announcement Number 204]

State and Community-Based Childhood Lead Poisoning Prevention Program; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC) announces the availability of grant funds in Fiscal Year 1992 for the initiation and expansion of State and community-based childhood lead poisoning prevention programs that (1) screen large numbers of infants and young children and identify those with lead poisoning, (2) identify possible sources of lead exposure, (3) monitor medical and environmental management of lead poisoned children, (4) provide information on childhood lead poisoning, its prevention and management, to the public, health professionals, and policy- and decision-makers, and (5) encourage community action programs directed to the goal of eliminating childhood lead poisoning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life.

This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see Where to Obtain Additional Information section.)

Authority

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 317A [42 U.S.C. 247b–1] of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51B.

Eligible Applicants

Eligible applicants are state health departments or other state health agencies or departments deemed most appropriate by the state to lead and coordinate the state's childhood lead poisoning prevention program, and agencies of units of local government that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, The Commonwealth of Puerto Rico, and any territory or possession of the United States. Also eligible are federally recognized Indian Tribal governments.

If a state agency applying for grant funds is other than the official state health department, written concurrence by the state health department must be provided.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

Approximately $15,000,000 will be available to fund approximately 15 new childhood lead poisoning prevention programs and provide support for currently funded programs. It is expected that the average new award will be $400,000 for the first year, with a range of $200,000 to $600,000. The new awards are expected to begin on or about July 1, 1992. Awards generally are made for 12-month budget periods within project periods not to exceed 5 years. Funding estimates may vary and are subject to change. Continuation awards will be for the recommended project period indicated in the original award and will be based on satisfactory progress and the availability of funds.

These grants are intended to develop, expand, or improve prevention programs in communities with demonstrated high-risk populations. Consideration will be given to others with a demonstrated childhood lead poisoning problem to support innovative strategies as part of a comprehensive plan to eliminate childhood lead poisoning as a public health problem. Grant awards cannot supplant existing funding for childhood lead poisoning prevention programs or activities. Grand funds should increase the level of expenditures from state, local, and other funding sources for childhood lead poisoning prevention. Awards will be made with the expectation that program activities will continue when grant funds are terminated at the end of the project period.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Note: Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these program activities are appropriately carried out.

Purpose

State and community health agencies and organizations are the principal delivery points for childhood lead screening and related medical and environmental management activities; however, limited resources have made it difficult for agencies to develop and maintain programs for the elimination of this totally preventable disease. This grant program will provide financial assistance and support to state and community-based agencies and organizations so that they may do the following:

1. Establish, expand, or improve screening services in communities with large numbers of children at high risk for lead poisoning. Emphasis should be on intensive community screening to reach children not currently served by existing health care services. Efforts should be integrated with, where available in the community, maternal and child health programs; State Medicaid programs, such as the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under section 340A of the PHS Act.

2. Intensify case management efforts to ensure that children with lead poisoning receive appropriate and timely follow-up services.

3. Establish, expand, or improve environmental investigations so that sources of lead exposure are rapidly identified and abated.

4. Develop infrastructure so that the provisions of the CDC Lead Statement, "Preventing Lead Poisoning in Young Children" (October 1991) can be implemented.

5. Develop an efficient information management system compatible with CDC data guidelines to monitor and evaluate program progress.

6. Improve the actions of other agencies and organizations to facilitate the rapid abatement of identified lead hazards in high risk communities.

7. Enhance knowledge and skills of program staff through training and other methods.

8. Based upon program findings, provide information on childhood lead poisoning to the public, policy-makers, the academic community, and other interested parties.

In summary, the purpose of this grant program is to provide impetus for development, operation, and institutionalization of state and community-based programs. Grant-supported programs are expected to serve as catalysts and models for the development of non-grant-supported programs and activities in other states and communities. Further, grant-supported programs should create community awareness of the problem (e.g., among community and business leaders, medical community, parents, educators, and property owners). It is expected that state health agencies will play a significant role in the development of community-based childhood lead poisoning prevenation programs including assuring coordination and integration with maternal and child health programs: State Medicaid EPSDT programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, where available in the community.

Program Requirements

The following are essential requirements for Childhood Lead Poisoning Prevention Projects:

1. A full-time director/coordinator with authority and responsibility to carry out the requirements of the program.

2. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of the program.

3. A plan to develop or improve capacity to collect and analyze data and ensure: (a) Reporting to the appropriate health agency all children with elevated blood lead levels identified by private and public laboratories: (b) ensuring appropriate follow-up of such children; (c) routine analyses of data on children with elevated blood lead levels.

4. A plan for the evaluation of all major program activities and services.

5. Demonstrated experience in conducting and evaluating public health programs.

6. Ability to translate program findings to state and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

7. Information that describes why communities were selected for screening activities, including information on housing conditions, income, other socioeconomic factors, and previous surveys or screening activities for childhood lead poisoning prevention.

8. A comprehensive education and outreach plan directed specifically to health professionals and para-professionals and the public. In addition, the plan should also address education and outreach activities directed to policy and decision-makers, parents, educators, property owners, community and business leaders, housing authorities and housing and rehabilitation workers, and special interest groups.

9. Effective, well-defined working relationships within and outside the public health agency at national, state, and community levels (e.g., housing authorities; environmental agencies; maternal and child health programs; State Medicaid EPSDT programs; community and migrant health centers; community-based organizations providing health and social services in or near public housing units; state epidemiology programs; state and local housing rehabilitation offices; schools of public health and medical schools; and environmental interest groups) to appropriately address the needs and requirements of programs (e.g., data management systems to facilitate the follow-up and tabulation of children reported with elevated blood lead levels, training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of networks with other state and local agencies with expertise in childhood lead poisoning prevention programming.

10. A plan to ensure continuation of the childhood lead poisoning prevention program beyond expiration of grant support.

11. For awards to state agencies, there must be a demonstrated commitment to provide technical, analytical, and program assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.

Evaluation Criteria

The review of applications will be conducted by a CDC-convened objective review committee. The major factors to be considered in the evaluation of responsive applications are:

1. *Evidence of the Childhood Lead Poisoning Problem* (30%)

The applicant's ability to identify populations and communities at high risk, as defined by data from previous screening efforts, environmental data, and/or demographc data.

2. *Understanding the Problem* (10%)

The applicant's understanding of the requirements, objectives, and complexities of and interactions required for a successful program.

3. *Program Personnel* (15%)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, (c) information on how the applicant will develop, implement and administer the program, and (d) the qualifications of the support staff.

4. *Technical Approach* (20%)

The overall balance of the program design measured in terms of intensive screening, medical management, lead hazard abatement, and education and outreach activities. There should be a balance between the number of children screened and found with elevated blood lead levels and the program's ability to assure the provision of appropriate and timely case management services. The adequacy of the program design includes the extent to which the evaluation plan can be used to effectively measure progress towards the stated objectives.

5. *Collaboration* (15%)

The applicant should demonstrate the ability to collaborate with political subdivisions of states in developing childhood lead poisoning prevention programs and collaboration with other program-related entities, such as maternal and child health programs; State Medicaid EPSDT programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, where available in the community. Evidence of collaborative relationships include jointly developed plans for providing services and written commitments of support for other program-related entities that describe the collaborative activities.

6. *Plans To Become Self-Sustaining* (10%)

An explanation of how program services will be continued after termination of federal grant funds, which includes identifying other sources of support during the project period. By the end of the second budget year, grantees must have concrete plans to ensure institutionalization of the program after termination of grant support.

7. *Budget Justification and Adequacy of Facilities* (NOT SCORED)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

Other Requirements

Data collection initiated under this grant program has been approved by the Office of Management and Budget under number 0920–0282, "Childhood Lead Poisoning Program Quarterly Reports," expiration date September 1992.

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR part 100, are applicable to this program. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert the SPOC to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catolog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Application Submission and Deadline

Applicants should follow the guidance provided in PHS form 5161–1 (REVISED 3/89) in preparing grant applications. The original and two copies must be submitted on or before April 3, 1992 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number.

1. *Deadline*

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. *Late Applications*

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6796 or FTS 236–6796.

Please refer to Announcement Number 204 when requesting information and submitting an application.

Technical assistance may be obtained from David L. Forney, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–28, Atlanta, Georgia 30333, (404) 488–4880 or FTS 236–4880.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: February 24, 1992.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 92–4711 Filed 2–28–92; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N–92–3400]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–6050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within seven days.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new, an extension, or reinstatement; and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of

the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 24, 1992.

Arthur Hill,

Assistant Secretary for Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Collecting Information under Service Coordinators in Section 202 and 202/8 Housing.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This reporting requirements will enable HUD to evaluate and review on an on-going basis the section 202 and 202/8 projects approved to hire Service Coordinators. This information will assist the department in its monitoring responsibilities to assure adherence and compliance to statutory and regulatory requirement of the program.

Form Number: None.

Respondents: Individuals or households and non-profit institutions.

Frequency of Submission: Monthly, on occasion, annually and recordkeeping.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden:							
Application to HUD	800		1=800		2		1,600
Annual reports	450		1=450		1		450

Recordkeeping Requirements:

	Number of recordkeepers	×	Annual hours recordkeeper	×	Total recordkeeping hours
Client/Appli files	450		5.86		2,637
Total estimated burden					4,687

Status: Revision.

Contact: Jerold Nachison, HUD (202) 708–3291, Jennifer Main, OMB (202) 395–6988.

Dated: February 24, 1992.

Supporting Statement for: Service Coordinators in Sections 202 and 202/8 Housing Title VIII—Section 808 National Affordable Housing Act

1. Justification

Background

(a) *Program description.* Title VIII—Section 808 of the National Affordable Housing Act (Pub. L. 101—625) (NAHA), authorized HUD to allow service coordinators as an eligible expense in section 202 and 202/8 projects in which a majority of the resident are frail. Any project for the elderly and disabled which had a majority of frail residents could apply to their HUD field office and receive permission to either utilize residual receipts or use funds under the existing Section 8 contract to fund the hiring of a service coordinator.

The Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1992, (Pub. L. 102–139) removed the majority of frail residents restriction from the NAHA and appropriated $16,250,000 for the funding of service coordinators in Section 202 and 202/8 projects.

A Service Coordinator is a social services staff position which is hired by the project administrator/management company and is responsible for assuring that the residents of the project are linked to the supportive services they need to continue independent living in that project. Sections 202 and 202/8 projects can immediately move to request approval to bring such staff on board. This policy recognizes the aging-in-place phenomenon that is taking place among the residents of HUD housing. The initial populations have become significantly older, and recent data shows that between 1985–88, 83 percent of new admissions to section 202 and 202/8 projects were over 66 and 70 percent were over 70 years of age.

We have also learned that project managers in projects for the elderly, generally, do not have the training and skills necessary to deal both with an increasingly frail population and the non-elderly disabled who need support services. Also, housing managers, generally, do not have the time available to function as "social services" staff on a regular ongoing basis. The Service Coordinator is the person who works with the tenants in need of support, refers them for assessment, links them with service providers in the community and monitors the provision of services. He/she is the missing and necessary link to improving the quality of life for the frail and the non-elderly residents of housing for the elderly, and is part of and a key support to the management team of a project. He/she works closely with management to ensure that the tenant (and the family) are assisted in getting the service necessary to continue residence in the project, or, if necessary, to assist with the decision to move to a higher level of care. The Service Coordinator does not provide support services directly or do other administrative duties normally associated with project management.

Authority

- Section 808 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 8011) allows service coordinators as an eligible project expense in section 202 and 202/8 projects.
- The Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1992, Pub. L. 102–139, enacted on October 28, 1991, provides $16,250,000 in Section 8 funds for Service Coordinators for section 202 and 202/8 projects, as a separate item in the HUD budget.
- The Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act of 1992, Pub. L. 102–139, enacted on October 28, 1991, removed the majority of frail residents restriction from the NAHA.

• HUD Notice H–91–42, issued May 21, 1991 described the process under which a section 202 and 202/8 project could apply and receive permission to hire a service coordinator. HUD issued Program Notice, H–92–6, "Service Coordinators in Section 202/8 Housing" on January 22, 1991, canceling HUD Notice H–91–42 because of the statutory changes to the program.

• HUD currently has in Departmental clearance a Program Notice providing general HUD policy and background information regarding Service Coordinators. This Notice also transmits the FY 1992 allocation of funds to HUD Regional Offices, and the requirements for field office and regional review and processing of submitted applications by projects.

2. Need for Information

The following collection of information is basic to the operation of the Service Coordinator's activities, to meet the statutory requirements, and for the essentials of program and management controls to prevent fraud, waste and mismanagement. The controls must be maintained as long as Service Coordinators are funded under this section, or until such time as Congress otherwise disposes of this job.

The following requirements are instituted specifically for the hiring of Service Coordinators in sections 202 and 202/8 projects.

(a) *Owner's application to HUD.* Each applicant must submit an application for the hiring of a Service Coordinator in section 202 and 202/8 projects for the elderly and disabled under which eligible projects will be selected in HUD Headquarters by lottery. Additionally, projects may apply to utilize excess residual receipts which they are holding, without participating in the national lottery. Applications for Service Coordinators shall contain a brief description of the need, the annual salary, fringe benefits and other costs proposed, functional position description, certifications and other information in accordance with HUD's requirements.

(b) *Annual report.* The annual project report is a brief narrative providing data and covering activities completed by the Service Coordinator for that year. This information will be used by the Loan Servicer to validate the function and to identify problems which need attention from the field office, primarily in coordination with other agencies. From time to time HUD Headquarters may request HUD field offices to prepare summations from this data for policy purposes or use in a possible study of the service coordination function in operation. The report will provide participant information, and other requested data in the annual report to HUD.

(c) *Project recordkeeping—client files.* Applications approved to provide a Service Coordinator as part of its operating budget must agree to keep files on the clients serviced by the Service Coordinator.

These files must be kept in a secured location and accessible only to the Service Coordinator and project management to the extent necessary. The project must maintain confidentiality of information related to any individual, per the Privacy Act of 1974. Generally, the files contain an intake form, information on referrals to community agencies, case management, monitoring and follow-up plans, adult abuse of any type, notes of meetings with client/family members and disposition/termination of case.

3. Use of Improved Information Technology

None—As HUD gains experience with this program, and we determine which information needs can be standardized, we may go to automated reporting, or delete the annual report requirement.

4. Duplication

No other forms or reports will be used for the purposes specified above.

5. Availability of Similar Information

Similar information is not available from any other source.

6. Small Organizations

Projects wanting to receive approval for a Service Coordinator will submit the application to gain the approval. As a part of the application, the project certifies willingness to keep project files and submit the annual report.

7. Consequence of Less Frequent Data Collection

Having the projects mail in a brief report annually is the smallest requirement we could impose for monitoring necessary to start-up a new effort.

8. Special Circumstances Related to 5 CFR 1320.6

There are no special circumstances required by this collection.

9. No Outside Consultation is Required

10. Assurance of Confidentiality

Each project is required to maintain the files in a secured location and maintain confidentiality of information related to any individual, per the Privacy Act of 1974.

11. Sensitive Questions

The information contained in the application to HUD for approval of a Service Coordinator and the annual report from the project to the field office are non-sensitive.

12. Estimate of the Cost to the Federal Government

The bulk of the work consists of reviewing and approving the initial request by field office staff. Headquarters will conduct the national lottery with a pool of eligible applicants. The review of individual clients is completed by the Service Coordinator, and files are not normally reviewed by HUD staff. Field Office staff may, on occasion, sample these files on site reviews. The annual report from the projects will be reviewed by field office staff and may be utilized in an on-site review. Also, if problems are cited, the field office may become involved in problem resolution.

Total Estimated Federal Review Time by Hours

	Reports	FO profess.	FO clerical	Elderly (HQ) hsg. profess	Elderly clerical
Application [4] to HUD [1]	800	1,600	200	178	0
Client application [5] Files [2]	22,500	394	0	0	0
Annual [6] Report [3]	450	58.50	0	0	0
Total	23,750	2,052.50	200	178	0

[1] We expect to review approximately 800 applications in FY 1992.
[2] There will not be any HUD field reviews of Service Coordinators, hence no file reviews, prior to FY 1993.
[3] Annual reports will not be submitted by projects before FY 1993.
[4] We expect there will be lots of telephone contact between the field offices and Headquarters regarding approval of Service Coordinators during FY 1992.
[5] See Note 2.
[6] See Note 3.

Total professional time 2,052.50+178=2,230.50 @ $33/hour×2,230.50=$73,606.50.

Total clerical time @ $15/hr 200 = $3,000.

Estimate of Costs to Respondents

Cost to respondents is estimated at $20/hr and includes overhead.

800 applications @ 2 hours preparation each=800×2=1,600×$20.=$32,000

450 annual reports @ 1 hour each=450×$20.=$9,000

22,500 files established @ .17 hrs each=3,825×$20=$76,500

13. Tabulation of Reporting Burden

Information collected	No. of respondents 17.1	×	No. of responses per 17.2	=	Total annual responses 17.3	×	Hours per response 17.4	=	Total hours 17.5
Owner Application to HUD	800		1		800		2		1,600
Annual Reports	450		1		450		1		450

Recordkeeping Requirements

	Number of recordkeepers	Annual hours per recordkeeper	Total rcd'kpng hours
Client/Appli files	450	5.66	2,637
Total Estimated Burden			4,687

14. Adjustments have been made in the total burden for the Service Coordinators in section 202 and 202/8 Housing. The total number of respondents increased from 600 to 800. However, due to the decrease in the number of recordkeepers the burden hours are decreased from 5,200 to 4,687, with a program adjustment of 513.

15. N/A

Note to Reader: he following excerpt from HUD's DRAFT funding notice sets out the application requirements to which this collection of information pertains. This is not the funding notice. The funding notice will be published in its entirety, separately, at the time that the Department is prepared to begin the competition for the Service Coordinator Program.

The purpose of this excerpt is to provide readers with a listing of the several information collections involved in the application process for this upcoming funding notice, to assist them in commenting on these information collections.

B. Application Requirements

All applications must contain at least the following information; necessary forms are available from the HUD field office:

1. A transmittal letter signed by the chairperson of the Board of Directors of the borrower/owner. The letter must include a statement that the request is to use: (1) Excess residual receipts; and/or (2) section 8 funds available under the Act (the project may propose combining them if the amount of excess residual receipts available is insufficient to cover the proposed of the service coordinator over its up-to-five-year term. The letter must state the specific amount requested and stating how much is from residual receipts and how much is from funds under the Act for each year of the funding request. The letter must also state the time period of the term of the HAP contract amendment and/or residual receipts approval requested. The term shall be five years or the remaining length of the existing Section 8 contract, whichever is less; renewal, if appropriate, may be requested at the completion of the term of the HAP contract amendment or residual receipts approval.

2. An SF–424, Request for Federal Assistance (this is ONLY submitted by applicants which are requesting funds available under the Act).

3. A brief explanation of the need. At a minimum, the request must:

a. State the estimated number of residents of the project(s) who are frail, near-frail, or "at-risk", as defined in Paragraph VII of Notice H–92–____; and,

b. Provide anecdotal or other evidence for the stated need.

4. The annual salary proposed for the service coordinator, plus fringe benefits and administrative costs (which may include additional office equipment, supplies, car allowance, copying, etc.) for the first year, the amounts needed for years two-five *AND* the total amount requested for the five year term. The estimates for years two-through-five (or less, if the remaining term of the section 8 contract is less), may be based on an annual inflation factor of up to five percent. Any one-time first-year start-up costs should be subtracted from year one before calculating the year two-through-five estimate.)

Evidence must be submitted to document comparability of the salary with other similar positons in the local jurisdiction.

5. Functional position description(s) for the service coordinator (and aides, if utilized). These must cover the duties stated in Paragraph VI of Notice H–92–____, and also state the relationship between the service coordinator (and aides, if any), and the project manager/administrator and other members of the management team.

6. For projects proposing to share a service coordinator (which may include one or more aides), the proposal must provide an explanation of how the arrangement would work, where ultimate responsibility lies for the hiring (and firing) of the coordinator and aides, and a copy of the proposed agreement between/among the borrowers/owners to cover space sharing, location and security of records, payment of salary(ies) and expenses, and the allocation of days and hours between/among the housing projects.

7. Certifications for:

a. 25 percent or more of the residents of the project(s) are frail;

b. Sufficient office space

(1) Existing offices

There is sufficient office space available for the coordinator, and aides, if appropriate), including space for confidential meetings and a location to secure files; OR

(2)Community Space

In cases where management proposes to utilize current community or non-commercial space for the service coordinator, the request must clearly state that it meets the stipulations of item 7.b.1, above, and indicate that the normal activities of the residents of the project will not be adversely affected by the use of the space.

c. The borrower/owner agrees to collect routinely and make available to HUD the information requested under paragraphs XIII.A and B of Notice HUD–92–____. The material in paragraph XIII.B must be submitted annually by mail to the field office, as a condition for

continued approval of a service coordinator position.

d. Drug-free Workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

e. Lobbying Certification Form (to be submitted if application is for $100,000 or more).

f. Prohibition Against Lobbying, Form SF–LLL, if appropriate, for applicants requesting $100,000 or more, pursuant to section 319 of Public Law 101–121, which prohibits recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government. (The law provides substantial penalties for failure to file the required certification or disclosure.)

g. Willingness to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR Part 1; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 109, and 110; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Age Discrimination Act of 1975 (42 U.S.C. 101–6107) and the implementing regulations at 24 CFR part 146; section 3 of the Housing and Urban development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; and affirmative fair housing marketing requirements of 24 CFR part 108, subpart M.

C. Submission of Applications

1. Submission to the Appropriate HUD Field Office

All applicants shall submit an original and one copy (a FAX copy of the application is NOT acceptable) of the application to the Field Office which services the project by the close of business on or before [insert date—45 days subsequent to the date of NOFA publication].

Applications received in the HUD field office after the date and time stated herein will not be accepted, and will be returned to the sender.

Each application package must be identified on the envelope or wrapper as follows: Director of Housing Management, Application for Service Coordinator, Due [insert date 60 days from date of publication of this NOFA].

Determination whether an application is received on time is solely the responsibility of the HUD field office of the jurisdiction in which lies the project(s) covered by the application.

[FR Doc. 92–4680 Filed 2–28–92; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–02–4212–02]

Montana; Closure and Limited Opening of Land

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Temporary closure; notice of limited opening of public land in Yellowstone County.

SUMMARY: Use of recently acquired land west of the town of Pompeys Pillar, Yellowstone County, is closed to the public until May 15, 1992. Access to these lands, commonly known as the Pompeys Pillar National Landmark and comprising 367 acres more or less, is limited to authorized personnel, or other persons specifically authorized by the Miles City District Manager or the Billings Area Manager of the Bureau of Land Management. This closure is necessary to protect persons from or to remove safety hazards currently existing on the site and to prevent undue degradation and damage to the site prior to its opening to public visitation. The land is not open to the public land laws, mineral leasing laws or mining laws. The site is open to authorized personnel for the following reasons: Historical and cultural inventory and preservation, general environmental studies, agricultural use, livestock grazing and maintenance. Maintenance includes but is not limited to the following: Roads, trails, buildings, signs, fences, tree felling and weed control. Designated roads and trails will be opened for activities necessary to prepare the land for public visitation and use.

After May 15, 1992, designated areas will be open to public visitation and dispersed recreation under the authority of the Federal Land Policy and Management Act of 1976.

DATES: The closure goes into effect March 2, 1992 and shall remain in effect until May 15, 1992, or until revoked or modified by the authorized officer. The land is open to specified agricultural use and livestock grazing March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Billy G. McIlvain, Area Manager, Billings Resource Area, 810 E. Main, Billings, Montana 59105, (406) 657–6262.

SUPPLEMENTARY INFORMATION: Authority for the closure is title 43, Code of Federal Regulations, § 8364.11 (43 CFR 8364.1). Any person who fails to comply with the closing order is subject to arrest and fine of up to $1,000 or imprisonment not to exceed 12 months or both. The closure applies to all members of the public except persons authorized by the Bureau of Land Management. The closure and opening affects the following described public land:

Principal Meridian, Montana

T. 3 N., R. 30 E.,
Sec. 21: Lots 2, 3, 4 and 16, W½SW¼, SE¼SW¼;
Sec. 22: Lots 9, 13 and 25;
Sec. 28: That part of the NW¼NW¼ lying north of the north boundary line of the US Highway 10 right-of-way and that part of the NE¼NW¼ more particularly described in a metes and bounds description on file in the above named office: and Tracts 1 and 2 of COS 1166; according to the official plat on file and of record in the office of Clerk and Recorder of said county, under Document No. 863682.

Excepting Therefrom all that part lying within the ordinary high water line of the Yellowstone River.

Arnold E. Dougan,

Acting Associate District Manager.

[FR Doc. 92–4741 Filed 2–28–92; 8:45 am]

BILLING CODE 4310–DN

Minerals Management Service

Outer Continental Shelf Advisory Board Gulf of Mexico Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) Meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463). The Gulf of Mexico RTWG meeting will be held March 24–25, 1992, at the Minerals Management Service (MMS) Gulf of Mexico OCS Regional Office, 1201 Elmwood Park Boulevard, Jefferson, Louisiana.

The business portion of the meeting will be held in conjunction with the Environmental Studies meeting. Agenda items are as follows:

- Roundtable Discussion.
- Assessment of Federal Sand Resources for Coastal Restoration and Replenishment.
- Pipelines Near the Flower Garden Banks.

• Flower Garden Banks National Marine Sanctury.

The afternoon of March 24 and morning of March 25, 1992, will be devoted to the Environmental Studies meeting.

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ms. Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736–2589 by March 11, 1992. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of respresentatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: February 7,1992.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 92–4742 Filed 2–28–92; 8:45 am]

BILLING CODE 4310–MR–M

Alaska Outer Continental Shelf; Public Scoping Meetings Regarding the Environmental Impact Statement for Proposed Oil and Gas Lease Sale 149, Cook Inlet

The February 7, 1992 (57 FR 4800) **Federal Register** contained Call for Information and Nominations and Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for proposed Oil and Gas Lease Sale 149, Cook Inlet.

The NOI for the proposed sale announced the scoping process that will be followed for the preparation of each EIS. The scoping process will involve Federal, State, and local governments and other interested parties aiding Minerals Management Service in determining the significant issues and alternatives to be analyzed in the EIS. This will be done through scoping meetings.

The area included in this sale is described in the **Federal Register** notice mentioned above. It is hoped that the information received at the scoping meetings will aid in identifying specific proposals and alternatives.

Scoping meetings will be held as follows:

March 16, 1992, Borough Assembly Chambers, 7 to 9 p.m., Kodiak, Alaska
March 17, 1992, Community Hall, 1 to 3 p.m., Port Lions, Alaska
March 17, 1992, City Council Chamber, 7 to 9 p.m., Larsen Bay, Alaska
March 19, 1992, Community Hall, 4 to 6 p.m., Chignik, Alaska
March 23, 1992, City Council Chambers, 5 to 7 p.m., Homer, Alaska
March 24, 1992, Community Hall, 1 to 3 p.m., English Bay, Alaska
March 24, 1992, City's Multi-Purpose Room, 7 to 9 p.m., Seldovia, Alaska
March 25, 1992, Council Chambers, 1 to 3 p.m., Port Graham, Alaska
March 26, 1992, Borough Assembly Chamber, 6 to 8 p.m., Soldotna, Alaska
March 27, 1992, 6th Floor Conference Room, 949 East 36th Avenue, 1 to 3 p.m., Anchorage, Alaska

Additional information concerning these meetings can be obtained from: Mr. Paul Dubsky, Minerals Management Service, Leasing and Environment Office, 949 E. 36th Avenue, Anchorage, Alaska 99508–4302, Telephone: (907) 271–6655.

Alan D. Powers,

Regional Director.

[FR Doc. 92–4709 Filed 2–28–92; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees Pursuant to the Comprehensive Envirgonmental Response, Compensation, and Liability, Act; BASF Corp., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 14, 1992, a proposed Consent Decree in *United States* v. *BASF Corp., et al.*, Civil Action No. *92–CV–40071–FL*, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns the hazardous waste site known as the Rasmussen Dump Site, located on Spicer Road, Green Oak Township, Livingston County, Michigan. The Consent Decree sets forth a settlement between the United States and ten Settling Defendants, under which the Settling Defendants will perform the remedial design and remedial action at the site, reimburse the United States for its unreimbursed past costs, and pay federal oversight costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *BASF Corp., et al.*, D.J. Ref. 90–11–3–281A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 204 Federal Building, 600 Church Street, Flint, Michigan 48502; at the Region V Office of the Environmental Portection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072).

Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please include a check in the amount of *$51.75* (25 cents per page for reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–4668 Filed 2–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Gateway Petroleum Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February *21*, 1992, a proposed Consent Decree in *United States* v. *Gateway Petroleum Co. Inc.*, Civil No. 88–3548, was lodged with the United States District Court for the Southern District of Illinois. The proposed consent Decree settles the United States' claims that the defendant had violated provisions of the Resource Conservation and Recovery Act.

Under the terms of the Consent Decree, settling defendant will pay $20,000 in civil penalties, implement a sampling program and implement a phased closure of the Gateway Petroleum Co. facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments

relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Gateway Petroleum Co. Inc.*, D.OJ. Ref. 90–7–1–472.

The proposed Consent Decree may be examined at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044, (202 347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 92–4669 Filed 2–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree in Clean Water Act Enforcement Action; Great Lakes Carbon Corp.

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Great Lakes Carbon Corp.*, Civil Action No. 90–0780, was lodged with the United States District Court for the Eastern District of Texas on February 13, 1992. This consent Decree concerns a Complaint filed by the United States against Great Lakes Carbon Corporation (Great Lakes), Port Arthur, Texas, pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319, for Great Lakes' violations of the effluent limits established in its National Pollutant Discharge Elimination System (NPDES) permit and its violation of the Clean Water Act. The Complaint seeks injunctive relief requiring Great Lakes to comply with the terms and conditions of its NPDES permit and to comply with the Clean Water Act.

The proposed Consent Decree requires that Great Lakes implement a compliance plan designed to achieve and maintain compliance with its NPDES permit and the Clean Water Act. The proposed Consent Decree also requires Great Lakes to pay a civil penalty of $327,000 for its past violations of the requirements of its permit and of the Clean Water Act, and to pay stipulated penalties for violations of the terms of the proposed Consent Decree.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Great Lakes Carbon Corp.*, 90–5–1–1–3557.

Copies of the proposed Decree may be examined at the Office of the United States Attorney, Eastern District of Texas, 700 North Street, Beaumont, Texas 77701–1899, and at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave, NW., Box 1097, Washington, DC 20004, (202) 347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.75 payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 92–4672 Filed 2–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Hercules Inc.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on February 6, 1992, a proposed Partial Consent Decree in *United States* v. *Hercules Incorporated*, Civil Action No. 292–027 was lodged with the United States District Court for the Southern District of Georgia, Brunswick Division. This is an action brought pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9606, 9607. Pursuant to the proposed decree, the settling defendants will finance and perform the Interim Remedial Design and Remedial Action ("RD/RA") at the Hercules 009 Landfill Site ("Site"), and reimburse the United States for future oversight costs and future response activities. The interim remedial action is part of an overall remedy; subsequent actions are planned to fully address conditions at the Site.

The Site was an industrial landfill from the 1920's to 1980. It encompasses 16.5 acres of land and is located three miles outside of the City of Brunswick, Georgia. The only potentially responsible party, Hercules Incorporated, has agreed to assume the responsibility for the Interim RD/RA.

The objective of this interim remedial action is to prevent the human consumption of contaminated groundwater. The remedy selected is the provision of an alternate supply of drinking water to the affected area residents. Private wells immediately down-gradient of the landfill will be replaced by the municipal water system The action will begin immediately. The settlement covers 100% of costs associated with the implementation of the RD/RA, including operation and maintenance of the Site and EPA's oversight costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530. Comments should refer to *United States* v. *Hercules Incorporated*, D.O.J. Ref. 90–11–3–811.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Georgia, 125 Bull Street, room 237, P.O. 8999, Savannah, Georgia 31412, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, P.O. Box 1097, Washington, DC 20004. In requesting a copy by mail, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–4666 Filed 2–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; City of Jacksonville, FL

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 6, 1992, a proposed Consent Decree in *United States* v. *City of Jacksonville, Fla., et al.*, Civil Action No. 92–133–Civ–J–16, was lodged with the United States District Court for the Middle District of Florida. The Complaint, brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9606 and 9607, seeks injunctive relief to abate an imminent and substantial endangerment to the public health or welfare or the environment, and recovery of response costs incurred or to be incurred by the United States in connection with the Picketville Road Landfill Superfund Site, Jacksonville, Florida (the "Site"). The Site is situated approximately five miles northwest of downtown Jacksonville, in Duval County, Florida, and occupies approximately 52.5 acres. The Site began operation in the early 1940's and was used until the 1960's primarily as a borrow pit for road construction projects. During its use as a borrow pit, fill material, particularly sand, was removed from the Site leaving large and deep below-grade excavations.

In the early 1980's, EPA, the City and the Florida Department of Environmental Regulation conducted investigations at the Site which detected numerous organic and inorganic contaminants in the ground water, the waters and sediments of Little Sixmile Creek, the surface soils of the landfill area, and the leachate discharge to Little Sixmile Creek. As a result of these investigations the Site was placed on the National Priorities List in 1982.

Pursuant to the proposed Consent Decree, the settling defendants will implement the remedial action set forth in EPA's Record of Decision ("ROD"), which was signed on September 28, 1990. The remedy selected in the ROD includes: Construction of a proper clay landfill cover with a passive gas collection layer; extension of the City water main to designated areas downgradient of the Site; plugging and abandonment of designated potable water supply wells downgradient of the Site; continuous ground water mointoring; restoration of Little Sixmile Creek to remove wastes which have washed, migrated, or been deposited into the creek; and performance of an ecological study of Little Sixmile Creek to determine impact of the Site on the creek. In the event that the ecological study reveals contamination which may impair the ecological community, additional remedial actions for the creek may be necessary. In addition, the proposed Consent Decree requires that the settling defendant reimburse the Hazardous Substances Superfund in the amount of $400,595.26 for costs incurred by EPA at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *City of Jacksonville, Fla., et al.*, D.O.J. Ref. 90–11–3–275.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Florida, Jacksonville, Florida, at the Region IV Office of the United States Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy by mail, please enclose a check in the amount of $15.25 (25 cents per page reproduction cost) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–4671 Filed 2–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Wheeling Disposal Service Co., Inc., et al.

In accordance with Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622, and Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on February 12, 1992, a proposed Consent Decree in *United States* v. *Wheeling Disposal Service Co., Inc., et al.*, Civil Action No. 92–0132–CV–W–1, was lodged with the United States District Court for the Western District of Missouri. The proposed Consent Decree resolves the liability of the Settling Defendants under Sections 106 and 107 of CERCLA at the Wheeling Disposal Service Company Landfill Superfund Site ("Site") located near Amazonia, Missouri. Under the terms of the Consent Decree, the Settling Defendants have agreed to conduct a remedial action at the Site, to reimburse EPA for past costs of $450,000, and to reimburse the United States for all oversight and future costs incurred at the Site.

To implement the remedial action at the Site, the Settling Defendants are required to: (1) Upgrade the existing cap over the disposal units; (2) provide long-term monitoring of ground and surface water; (3) implement site maintenance activities; (4) place deed restrictions to prevent farming on certain areas on-site; (4) install security measures such as warning signs and/or fences; and (5) close certain on-site wells. These response actions are intended to minimize the possibility of future human contact with hazardous substances. The proposed Consent Decree also provides contingencies for future collection and treatment of contaminated surface water and/or ground water by the Settling Defendants.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Wheeling Disposal Service Co., Inc., et al.*, D.J. Ref. No. 90–11–2–459A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Missouri, 549 U.S. Courthouse, 811 Grand Ave., Kansas City, Missouri 64106, the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66106, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, 202–347–2072. A copy of the proposed Consent Decree can be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $25.50 (25 cents per page

reproduction charge) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 92-4670 Filed 2-28-92; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to Clean Air Act; Williams Pipe Line Co.; et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 18, 1992, two proposed consent decrees in *United States* v. *Williams Pipe Line Company, et al.*, Civil Action No. 89-1393-T, were lodged with the United States District Court for the District of Kansas. The proposed consent decrees concern a complaint filed by the United States on July 25, 1989, which alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and its implementing regulations codified at 40 CFR part 61, subpart M, at the Augusta Refinery which is located in Augusta, Kansas.

The complaint alleged that defendants Williams Pipe Line Company, (WPL) and CYLX Engineering and Construction Company, (CYLX) failed to adequately wet friable asbestos material while being stripped or removed as well as failing to adequately wet friable asbestos material which had been removed or stripped from the facility while awaiting collection and disposal in accordance with the NESHAP workplace standards. The complaint also alleged that defendant WPL failed to give proper notice of its intent to remove friable asbestos from the facility in violation of the NESHAP notice provision. The complaint sought injunctive relief to require compliance with the asbestos NESHAP standards and civil penalties for past violations.

The Consent Decrees require defendants WPL and CYLX to pay $50,000 and $10,000, respectively, in settlement of the United States' claims for civil penalties against them. In addition, the decrees require each defendant to develop and implement an Asbestos Control Program and to successfully complete an EPA approved Employee Asbestos Training Program.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Williams Pipe Line Company, et al.*, Ref. No. 90-5-2-1-1268.

The proposed consent decrees may be examined at the following locations: (a) Office of the United States Attorney for the District of Kansas, 306 U.S. Courthouse, 401 North Market Street, Wichita, Kansas 67202; (b) the Region VII Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101; and (c) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decrees may be obtained in person or by mail from the Document Center. In requesting a copy of the CYLX and WPL decrees, please enclose a check for copying costs in the amount of $4.25 and $3.75, respectively (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 92-4667 Filed 2-28-92; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Art Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Arts on Television Section) to the National Council on the Arts will be held on March 25, 1992 from 9:15 a.m.-6:30 p.m. and March 26 from 9 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 25 from 9:15 a.m.-9:45 a.m. and March 26 from 4 p.m.-5:30 p.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on March 25 from 9:45 a.m.-6:30 p.m. and March 26 from 9 a.m.-4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9) (B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-4738 Filed 2-28-92; 8:45 am]

BILLING CODE 7537-01-M

President's Committee on the Arts and the Humanities; Meeting

Thursday, March 19, 1992 at 9 o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Meeting XXVI. This meeting will take place at 1100 Pennsylvania Avenue, NW, suite 527, Washington, DC.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, will address issues related to the development of data and information, advocacy, and recognition of artists, scholars and their benefactors.

Please call 202-682-5409 or 212-512-5957 if you expect to attend, as space is limited.

Yvonne M. Sabine,

Director, Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 92-4739 Filed 2-28-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 149 to Facility Operating License No. DPR-61 issued to

Connecticut Yankee Atomic Power Company, which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to remove two footnotes from the Technical Specifications defining the auxiliary feedwater system (AFW) operability and provide new limiting condition of operation, Action statement, set points and surveillance requirements for the new automatic AFW initiation system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 30, 1991 (56 FR 49492). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further deatils with respect to the action see (1) the application for amendment dated August 30, 1991, as supplemental December 2 and 24, 1991, and February 4, 21, and 24, 1992, (2) Amendment No. 149 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's related Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 24th day of February 1992.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-4756 Filed 21-28-921; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Entergy Operations, Inc. (Grand Gulf Nuclear Station, Unit No. 1); Exemption

I

Entergy Operations, Inc. (the licensee), is the holder of Facility Operating License No. NPF-29 (the license), which autrhorizes operation of the Grand Gulf Nuclear Station. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) new and hereafter in effect.

The facility consists of a boiling water reactor located at the licensee's site in Claiborne County, Mississippi.

II

By letter dated June 25, 1991, the licensee applied for an amendment to Operating License No. NPF-29 to change certain provisions of the Technical Specifications (TS). In its letter, the licensee also requested an exemption from the Commission's regulations. The exemption is from a requirement in appendix J to 10 CFR part 50 that certain surveillance tests be conducted during the same refueling outage.

The specific requirement is contained in Section III.D.1(a) of appendix J to 10 CFR part 50, and states in part that "* * * a set of three Type A tests shall be performed, at approximately equal intervals, during each 10-year service period. The third test of each set shall be conducted when the plant is shut down for the 10-year plant inservice inspections." The Type A tests are defined in Section II.F of appendix J as those "* * * tests intended to measure the primary reactor containment overall integrated leakage rate * * * at periodic intervals * * *." The 10-year inservice inspection is that series of inspections performed every 10 years in accordance with Section XI of the ASME Bolder and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The time required to perform the integrated leak rate tests (ILRTs) necessitates that they be performed during refueling outages. The interval between ILRTs should be 40 months for three tests to be performed during each 10-year period. Since refueling outages do not necessarily coincide with a 40-month interval, a permissible variation of 10 months is typically authorized in the TS issued with an operating license to allow flexibility in scheduling the IRLTs.

The second of the set of three ILRTs for the Grand Gulf plant was successfully conducted in April 1989 during Refueling Outage 3 (RF03). The Grand Gulf TS require that the next ILRT be conducted between October 1991 and June 1993. It can thus be conducted during Refueling Outage 5, which will probably start in April 1992.

Because of the time it takes, the 10-year ISI required by 10 CFR 50.55a must also be conducted during a refueling outage. The next ISI will be performed during the Refueling Outage 7 (RF07) starting in June 1995. If the requested exemption is not granted, Section III.D.1(a) of Appendix J would require an additional ILRT in April 1992, about 36 months after the previous ILRT. This schedule would conform with the interval set forth in the TS, but the test would not fall during the 10-year ISI.

Additionally, this schedule would necessitate another test during RF07. In these circumstances, to require compliance with the 40±10-month test interval would not be consistent with either the intent or the underlying purpose of the rule, which calls for three Type A tests to be performed at approximately equal intervals during each 10-year service period.

In its exemption request dated June 25, 1991, the licensee cites from Appendix J that "the purpose of the tests is to assure that * * * leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications * * *." The licensee asserts, and the NRC staff agrees, that the Type A test conducted in April 1989 met the underlying purpose of the rule in demonstrating the required overall leak-tightness of the primary containment. Accordingly, another Type A test in the forthcoming refueling outage is not necessary to meet the intent of the rule. Another ILRT in the forthcoming refueling outage would not add significantly to the assurance that the overall leakage rate of the primary containment and its penetrations remain within the value specified in the Grand Gulf TS and certainly would go beyond the intent of the rule that requires these tests to be conducted at approximately equal intervals.

On this basis, we find that the licensee has demonstrated that the

"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * * (10 CFR 50.12(a)(2)(ii).

The Type A test and the 10-year ISI are independent of each other and provide assurances of different plant characteristics. The Type A tests assure the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR part 100. The 10-year ISI provides assurance of the structural integrity of the structures, systems, and components in compliance with 10 CFR 50.55a. Accordingly, there is no safety-related reason for coupling them in the same refueling outage.

On this basis, the NRC staff finds the licensee to have demonstrated, as required by 10 CFR 50.12(a)(2), that special circumstances are present. Furthermore, the staff finds that the uncoupling of the Type A test from the 10-year ISI will not present an undue risk to the public health and safety.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest, and hereby grants an exemption with respect to one of the requirements of 10 CFR part 50, appendix J, Sections III.D.1(1):

Grand Gulf Nuclear Station Technical Specifications may be revised to require that the IRLTs be performed solely according to the 40±10-month frequency, not in conjunction with the 10-year inservice inspection. This Exemption does not alter the existing requirement that three ILRTs be performed during each 10-year service period.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (57 FR 6046).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 20th day of February, 1992.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-4755 Filed 2-28-92; 8:45 a.m.]

BILLING CODE: 7590-01-M

[Docket No. 50-364]

Southern Nuclear Operating Co., Inc.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards; Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-8 issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Joseph M. Farley Nuclear Plant, (Farley) Unit 2, located in Houston County, Alabama.

The proposed amendment would modify the Technical Specifications (TS), on an interim basis, to allow the implementation of interim plugging criteria for tube support plate elevations. The amendment would also modify the TS to reduce the total allowable primary-to-secondary operational leakage from any one steam generator from 500 gallons per day to 150 gallons per day. The total allowable primary-to-secondary operational leakage through all steam generators will be reduced from one gallon per minute (1,440 gallons per day) to 450 gallons per day.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) crate the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Farley Unit 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free standing tubes at room temperature conditions show burst pressures as high as 5000 psi for indications of outer diameter stress corrosion cracking with voltage measurements as high as 30 volts. Burst testing performed on pulled tubes with up to 10 volt indications show burst pressures in excess of 5900 psi at room temperature. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the (USNRC Regulatory Guide) R.G. 1.121 criterion requiring the maintenance of a margin of three times normal operating pressure differential on tube burst if through-wall cracks are present. Based on the existing data base, this criterion is satisfied with bobbin coil indications with signal amplitudes less than 6.2 volts, regardless of the indicated depth measurement. This structural limit is based on a lower 95% confidence level limit of the data. The 1.0 threshold volt criteria provides an extremely conservative margin of safety to the structural limit considering expected growth rates of [outer diameter stress corrosion cracking] ODSCC at Farley. Alternate crack morphologies can correspond to 6.2 volts so that a unique crack length is not defined by a burst pressure to voltage correlation. However, relative to expected leakage during normal operating conditions, no field leakage has been reported from tubes with indications with a voltage level of under 7.7 volts (as compared to the 1.0 volt proposed interim tube plugging limit).

Relative to the expected leakage during accident condition loading, the accidents that are affected by primary-to-secondary leakage and steam release to the environment are Loss of External Electrical Load and/or Turbine Trip, Loss of All AC Power to Station Auxiliaries, Major Secondary System Pipe Failure, Steam Generator Tube Rupture, Reactor Coolant Pump Locked Rotor, and Rupture of a Control Rod Drive Mechanism Housing. Of these, the Major Secondary System Pipe Failure is the most limiting for Farley Unit 2 in considering the potential for off-site doses. The offsite dose analyses for the other events which model primary-to-secondary leakage and steam release from the secondary side to the environment assume that the secondary side remains intact. The steam generator tubes are not subjected to a sustained increase in differential pressure, as is the case following a steam line break (SLB) event. This increase in differential pressure is responsible for the postulated increase in leakage and associated offsite doses following a steam line break event. Upon implementation of the interim plugging criteria, it must be verified that the expected distribution of cracking indications at the tube support plate intersections are such that primary-to-secondary leakage would result in site boundary dose within the current licensing basis for Unit 2, 1 gallon per minute during a steam line break event. Data indicate that a threshold voltage of 2.8 volts would result in through-wall cracks long enough to leak at SLB conditions. Application of the proposed plugging criteria requires that the current distribution of a number of indications versus voltage be obtained during the Unit 2 Eighth Refueling Outage. The current voltage is then combined with the rate of change in voltage measurements to establish an end of cycle

voltage distribution and, thus, leak rate during SLB pressure differential. If it is found that the potential SLB leakage for degraded intersections planned to be left in service excess 1 gallon per minute, then additional tubes will be plugged or repaired to reduce SLB leakage potential to 1 gallon per minute or less.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed interim tube support plate elevation steam generator tube plugging criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions). The bobbin probe signal amplitude plugging criteria is established such that operational leakage or excessive leakage during a postulated steam line break condition is not anticipated.

(Southern Nuclear Operating Company, Inc.) SNC will implement a maximum leakage rate limit of 150 (gallons per day) gpd per steam generator to help preclude the potential for excessive leakage during all plant conditions upon application of the plugging criteria. The R.G. 1.121 criterion for establishing operational leakage rage limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture. The 150 gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. R.G. 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of three against bursting a normal operating pressure differential. A voltage amplitude of 6.2 volts for typical OD SCC corresponds to meeting this tube burst requirement at the lower 95% uncertainty limit on the burst correlation. Alternate crack morphologies can correspond to 6.2 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at three times normal operating pressure differential and SLB conditions are about 0.42 inch and 0.84 inch, respectively. Normal leakage for these crack lengths would range from 0.11 gallons per minute to 4.5 gallons per minute, respectively, while lower 95% confidence level leak rates would range from about 0.02 gallons per minute to 0.6 gallons per minute, respectively.

An operating leak rate of 150 gpd will be implemented in application of the tube plugging limit. This leakage limit provides for detection of 0.4 inch long cracks at nominal leak rates and 0.6 inch long cracks at the lower 95% confidence level leak rates. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for SLB conditions at leak rates less than a lower 95% confidence level and for three times normal operating pressure differential at less than nominal leak rates.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the interim tube support plate elevation plugging criteria at Farley Unit 2 is demonstrated to maintain steam generator tube integrity commensurate with the requirements of R.G. 1.121. R.G. 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability of the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of OD SCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The most limiting effect would be a possible increase in leakage during a steam line break event. Excessive leakage during a steam line break event, however, is precluded by verifying that, once the criteria is applied, the expected end of cycle distribution of crack indications at the tube support plate elevations would result in minimal, and acceptable primary to secondary leakage during all plant conditions and, hence, help to demonstrate radiological conditions are less than a small fraction of the 10 CFR (part) 100 guideline.

In addressing the combined effects of (loss-of-coolant accident) LOCA + (safe shutdown earthquake) SSE on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to either the LOCA rarefaction wave and/or SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the [reactor coolant system] RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential [that partial] through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, a detailed leak-before-break analysis was performed and it was concluded that the leak-before-break methodology (as permitted by GDC 4) is applicable to the Farley Unit (2) reactor coolant system primary loops and, thus, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design basis of the plant. Excluding breaks in the RCS primary loops, the LOCA loads from the large branch line breaks were analyzed at Farley Unit 2 and were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation.

Regardless of whether or not leak-before-break is applied to the primary loop piping at Farley Unit 2, any flow area reduction is expected to be minimal (much less than 1%) and PCT margin is available to account for this potential effect. Based on recent analyses results, no tubes near wedge locations are expected to collapse or deform to the degree that secondary to primary in-leakage would be increased over current expected levels. For all other steam generator tubes, the possibility of secondary-to-primary leakage in the event of a LOCA + SSE event is not significant. In actuality, the amount of secondary-to-primary leakage in the event of a LOCA + SSE is expected to be less than that currently allowed, i.e., 500 gpd per steam generator. Furthermore, secondary-to-primary in-leakage would be less than primary-to-secondary leakage for the same pressure differential since the cracks would tend to tighten under a secondary-to-primary pressure differential. Also, the presence of the tube support plate is expected to reduce the amount of in-leakage.

Addressing the R.R. 1.83 considerations, implementation of the tube plugging criteria is supplemented by 100% inspection requirements at the tube support plate elevations having OD SCC indications, reduced operating leak rate limits, eddy current inspection guidelines to provide consistency in voltage normalization, and rotating pancake coil inspection requirements for the larger indications left in service to characterize the principal degradation mechanism as OD SCC.

As noted previously, implementation of the tube support plate elevation plugging criteria will decrease the number of tubes which must be taken out of service with tube plugs or repaired. The installation of steam generator tube plugs would reduce the RCS flow margin, thus implementation of the interim plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any basis of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis. In addition, with respect to the third standard, the NRC staff has considered the potential for a reduction in the margin to burst for tubes using the proposed criteria and finds that the margin to burst is comparable to that provided by the existing Technical Specification

requirements. Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications, Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 1, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to

Elinor G. Adensam: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, and to James H. Miller, III, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 20, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 26th day of February 1992.

For the Nuclear Regulatory Commission.

Stephen T. Hoffman,

Project Directorate II–I, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92–4877 Filed 2–27–92; 11:42 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Ryan-Walsh, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from Ryan-Walsh, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from the requirement was published on November 14, 1991 (56 FR 57910). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Hops, Attorney, Office of General Counsel; (22521), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8824 (202–956–5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076. The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1). Such questions are to be decided by the plan sponsor in the first instance, and any disputes are to be resolved in arbitration. 29 U.S.C., Sections 1382, 1399, 1401.

Under the PBGC's regulation on variances for sales of assets (29 CFR part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information with the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and §2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register** and provide interested parties with an

opportunity to comment on the proposed variance or exemption.

The Decision

On November 14, 1991 (56 FR 57910), the PBGC published a request for Ryan-Walsh, Inc. ("the Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) as it applies to the purchase of the assets of the Wilmington Shipping Co. ("the Seller") relating to the Seller's stevedoring operations at Wilmington and Morehead City, North Carolina. The sale of assets became effective on July 1, 1991. No comments were received in response to the notice.

Employees at the purchased facility are covered by a multiemployer pension plan, the Employers-I.L.A.-North Carolina Ports Area Pension Plan ("the Plan"). The Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from the fund within five years of the sale. The Buyer has subcontracted with the Seller to have the Seller perform the stevedoring work at the purchased operations, with the Seller being responsible for, among other things, making contributions to the Plan. The subcontract further provides that the Buyer is ultimately responsible for ensuring that the requisite contributions for the purchased operations are made to the Plan. The seller's potential withdrawal liability is estimated to be $1,869,961. The amount of the bond/escrow that would be required of the Buyer under section 4204(a)(1)(B) is $892,292 (the annual contribution the Seller made to the Fund for the plan year preceding the plan year in which the sale of assets occurred).

According to its consolidated financial statements as of December 31, 1990, the Buyer meets the requirements of both the net income test and the net tangible assets test described in 29 CFR 2643.14(a) (1) and (2). These financial statements indicate that the Buyer's consolidated net income for the 3 years preceding the sale exceeds 150 percent of the amount of the bond/escrow required under section 4204(a)(1)(B), and that its consolidated net tangible assets exceed the estimated withdrawal liability of the Seller. The Buyer has indicated that these statements are confidential within the meaning of 5 U.S.C., 552 (b)(4).

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the plan sponsor.

Issued at Washington, DC, on this 18th day of February, 1992.

James B. Lockhart III,

Executive Director.

[FR Doc. 92-4757 Filed 2-28-92; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30394; File No. SR-Amex-90-06]

Self-Regulatory Organizations; American Stock Exchange, Inc.

February 21, 1992

In the matter of Order Approving Proposed Rule Change, Including Amendment No. 1, and Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change, Relating to Listing Guidelines for Certain Unit Investment Trusts and the Listing of Unit Investment Trusts sponsored by SuperShare Services Corp.

I. Introduction

On May 14, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend section 118 of the Amex Company Guide to provide listing guidelines for certain investment trusts and to list securities issued by unit investment trusts sponsored by SuperShare Services Corporation ("SSC"), a majority owned subsidiary of Leland O'Brien Rubinstein Associates Incorporated, called SuperUnits.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28095 (June 6, 1990), 55 FR 24016 (June 13, 1990). No comments were received on the proposed rule change.[4]

II. Description of Proposal

A. Listing Requirements for Unit Investment Trusts.

The Exchange proposes to amend section 118 of the Amex Company Guide by adding a new part B to provide for the listing of a unit investment trust that issues securities based on a portfolio of stocks included in a broad-based stock market index and/or a portfolio of money market instruments or other debt securities.[5] Under proposed section 118B, these unit investment trusts may operate on an open or closed end basis and may permit investors to separate their securities into distinct trading components. These distinct trading components may represent interests in the income, capital appreciation potential, or other economic characteristics of the securities deposited in the unit investment trust.

Under the proposal, a unit investment trust's eligibility for listing its securities will be subject to the following requirements. First, if a unit investment trust is a closed end trust, or if it is an open end trust conditioned upon achieving a minimum dollar amount of participation, the trust must have total assets of at least $60,000,000 at the time of formation and have a minimum public distribution of 1,000,000 shares or units held beneficially or of record by 400 round lot holders of shares or units, or of separate components of the shares or

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] See discussion, at "Listing of Unit Investment Trust Sponsored by SSC," *infra*, describing the SuperUnits proposed to be traded on the Amex.

[4] The proposal was amended on August 27, 1990, to clarify that the stock index on which unit investment trust securities may be based must be a broad-based stock market index that is of the type the Commission has previously reviewed and approved for index products, to provide procedures governing trading halts and the entering of discretionary orders in unit investment trust securities, and to modify the original customer suitability standard proposed for these securities. This amendment was noticed in Securities Exchange Act Release No. 28410 (September 6, 1990), 55 FR 37783 (September 13, 1990). No comments were received on the amendment. The proposal was amended again on November 9, 1990, to permit the trading of unit investment trust securities on the Amex until 4:15 p.m.

[5] In a letter from James F. Duffy, Senior Vice President and General Counsel, Legal & Regulatory Policy Division, Amex, to Howard L. Kramer, Assistant Director, Office of Self Regulatory Oversight, Division of Market Regulation, SEC, dated August 23, 1990, the Amex stated that for the purpose of section 118B, broad based indexes would include those indexes that have been reviewed by the Commission in connection with domestic trading of index-based derivative instruments, such as index options, futures and warrants and treated as broad-based indexes. The Amex further stated that prior to listing a trust based on an index that the Commission had not previously reviewed the Exchange would file a proposed rule change pursuant to Rule 19b-4 under the Act.

units. Second, the stated term of a unit investment trust may not be less than two years.[6] Third, any person or entity serving as trustee is subject to the requirements of paragraphs (a), (c) and (d) of section 811 of the Amex Company Guide.[7] Fourth, if a security issued by a unit investment trust is divided into separate components, any voting rights afforded the security are to be divided between the component securities as specified in the trust's prospectus. Fifth, a unit investment trust applying for listing must sign a listing agreement with the Amex.

Under the proposal, the Exchange will consider the suspension of trading in or removal from listing of the securities of a unit investment trust if further dealings in such securities appears unwarranted due to the occurrence of any of the following circumstances: The trust has more than 60 days remaining until termination and there are less than 50 record and/or beneficial holders of shares, units or trading components thereof for 20 or more consecutive trading days; there has been a failure on the part of the trust and/or trustee to comply with the Amex's listing policies or agreements; or such other event occurs or condition exists that, in the Amex's opinion, make further dealings on the Exchange inadvisable.

B. Listing of Unit Investment Trust Sponsored by Supershare Services Corporation

The Amex will consider listing securities issued by a unit investment trust on a case-by-case basis. Currently, the Amex proposes to list the securities of an open end unit investment trust sponsored by SSC.[8] This unit investment trust will be named "SuperTrust" and initially will consist of two separate trusts, the Index Trust and the U.S. Treasury Money Market Trust ("Money Market Trust"). For an initial investment of at least $10,000, an investor may purchase shares of either the Index Series or the U.S. Treasury Money Market Series of the Capital Market Fund, Inc. ("Fund"), which is an open-end management investment company organized as a series fund under the Investment Company Act of 1940. Fund shares will not be exchange-traded. Throughout the life of the SuperTrust, holders of shares of the Index Series of the Fund will be able to tender shares with a minimum net asset value of $5,000 for deposit into the Index Trust and receive, in exchange, Index Trust SuperUnit Securities ("Index Trust SuperUnits"). Similarly, holders of shares of the U.S. Treasury Money Market Series of the Fund will be able to tender shares with a minimum net asset value of $5,000 for deposit into the Money Market Trust and receive, in exchange, U.S. Treasury Money Market Trust SuperUnit securities ("Money Market Trust SuperUnits").[9] Index Trust and Money Market Trust SuperUnits are redeemable units of beneficial interest investing in the Index Series and U.S. Treasury Money Market Series of the Fund, respectively.[10] Both the Index Trust and the Money Market Trust will operate on an open-end basis with no maximum number of holders.

Upon payment of a separation fee, holders may separate their SuperUnits into four distinct securities call SuperShares.[11] Index Trust SuperUnits can be separated, for a fee, into an Appreciation SuperShare and a Priority SuperShare. The Appreciation SuperShare represents an interest in the potential capital appreciation of the Index Trust SuperUnit by providing the holder with the right to receive at termination of the Index Trust any portion of the net asset value of the SuperUnit that exceeds a specified amount.[12] The Priority SuperShare gives the holder the right to receive all dividends paid on the Index SuperUnit and on termination the net asset value of the Index Trust SuperUnit, less an amount equal to what the Appreication SuperShare is entitled. On termination, payments will be made in shares of the Index Series of the Fund.[13]

The Money Market Trust SuperUnit can be separated, for a fee, into a Protection SuperShare and an Income and Residual SuperShare. The Protection SuperShare is designed to permit its holder to hedge against the possibility that the value of the Standard & Poor's 500 Composite Stock Price Index will be less than a specified amount at the termination of the Money Market Trust. If the Index Trust SuperUnit at the termination of the Money Market Trust is less than a specified amount, the holder will receive an amount equal to the deficiency, with a cap at a certain level.[14] The Income and Residual SuperShare represents the right to receive at termination the net asset value of the SuperUnit less an amount equal to what the Protection SuperShare is entitled.[15] On termination, payments will be made in shares of the U.S. Treasury Money Market Series of the Fund[16]

SuperUnits may be redeemed for an in-kind distribution of Fund shares.[17]

---

[6] A unit investment trust, however, may be terminated before two years under certain circumstances, as specified in the trust prospectus.

[7] Section 811(a) requires that the trustee be a trust company or a banking institution having substantial surplus and the experience and facilities for handling corporate trust business. Section 811(a) permits an individual to act as a trustee if a qualified trust company or banking institution is appointed as co-trustee. Section 811(c) prohibits from acting as a trustee any officer or director of the issuing company, any trust company, banking institution, or other organization in which an officer of the issuing company is an executive officer; or any organization controlled by, or under common control with, or which itself controls, the issuing company. Finally, section 811(d) prohibits any change from being made in the trustee of a listed issue without prior notice to and approval of the Amex.

[8] The Amex is proposing to list only the SuperUnit securities issued by the Trust although Amex proposed listing guidelines would be broad enough to include the listing of components such as SuperShares. The SuperUnit securities can be separated into SuperShare securities. Concurrently with the approval of the Amex proposal, the Commission has approved a proposal by the Chicago Board Options Exchange, Inc. to list the SuperShare securities. See, Securities Exchange Act Release No. 30393.

[9] The commencement of the exchange offer to Fund shares for SuperUnits is conditioned upon an aggregate of two billion dollars in subscriptions for the Index Trust and the Money Market Trust SuperUnits and the satisfaction of the Amex and the CBOE listing standards. SSC represents that if these conditions are not met, all subscriptions will be cancelled and no Fund shares, SuperUnits or SuperShares will be issued.

[10] The exchange offer will continue until the SuperTrust termination date and may be terminated or suspended only under the limited circumstances described in the 5th Amended and Restated Application pursuant to section 6(c) of the 1940 Act ("Application"), namely, Trust delisting from the Amex, termination based on a Commission order, or when the net asset value of the Index Trust SuperUnits exceeds the Termination Date Amount for such units.

[11] The voting rights of a SuperUnit will be divided equally between the two SuperShare that together comprise the SuperUnit.

[12] The Appreciation SuperShare has characteristics that are similar to a call option (or warrant). As noted above, the holder is entitled to the amount the Index SuperUnit exceeds a pre-stated specified amount. This amount is similar to a stricke price. If the market outperforms the "strike price," as with any call index option, the owner is entitled to the difference.

[13] SSC has reserved the right to make the payments in cash or in a combination of Fund shares and cash.

[14] The Protection SuperShare has characteristics that are similar to a put option (or warrant) spread. As noted above, the holder is entitled to receive the amount the value of the Index SuperUnit is less than a preestablished specified amount, with a cap at a certain level. The specified amount and cap level are analogous to strike prices.

[15] The income and Residual SuperShare is an extremely complex component of the Money Market SuperUnit. Investors should be informed that the returns on the Income and Residual SuperShare are linked to the value of the S&P 500 Index although they are components of the Money Market SuperUnit. Accordingly, Amex members recommending transactions in SuperUnits or SuperShares should be careful to give a clear and concise description of the Income and Residual SuperShare.

[16] See note 13 *supra*.

[17] SSC has reserved the right to redeem in cash or in a combination of cash and Fund shares.

SuperShares cannot be redeemed separately, but complementary SuperShares may be recombined into SuperShares and then redeemed into Fund shares. As noted above, the Amex only intends to trade the SuperUnits while the CBOE has proposed and received approval to trade the SuperShares.[18]

C. Trading of Unit Investment Trust Securities

The Amex proposal includes rules to govern the trading of unit investment trust securities ("UIT securities"). First, the Amex proposal provides procedures to govern the application of trading halts. Specifically, the Amex has stated that prior to the commencement of trading in UIT securities, the Amex will issue a circular to its members informing them of Exchange policy regarding trading halts in such securities. According to the Amex, the circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Exchange Rule 918C(b) in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[19]

Second, the Amex proposal includes rules governing the entering of discretionary orders in UIT securities. Currently, Exchange rules prohibit an Exchange member from exercising discretion in a customer's account unless the account has been approved as a discretionary account by the person delegated such responsibility under Rule 320(c)(1) or, in the case of an options account, by a Senior Registered Options Principal.[20] The proposal would add, for listed UIT securities that are separable into distinct trading components, an additional requirement that discretionary orders in such securities must be aproved and initialled on the day entered by a person delegated such responsibility under Exchange Rule 320(c)(i) or, in accounts approved for options trading, by a Senior Registered Options Principal or Registered Options Principal.

Third, the proposal adds a new Commentary .03 to Exchange Rule 1 which provides that transactions in UIT secruities may be effected on the Amex until 4:15 p.m. on each business day. This trading time corresponds with the close of trading for index options and the trading hours proposed by the CBOE for SuperShares.

Fourth, the Amex proposal sets forth the customer suitability standards applicable to UIT securities. As an initial matter, proposed Commentary .04 would require that customers be provided with an explanation of any special characteristics and risks attendant to trading the securities of a unit investment trust listed under proposed section 118B. The Amex has stated that the Exchange will circulate to its membership information describing any such characteristics and risks before trading commences in UIT securities. Proposed Commentary .04 to Exchange Rule 411 provides that before an Exchange member, member organization, or registered employee of a member organization recommends a transaction in the component securities, resulting from the subdivision or separation of the securities issued by a unit investment trust, or in the units which may be separated into the component securities, a determination must be made that the transaction is not unsuitable for the customer. The proposed commentary further provides that the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of any of the constituent securities. This means that a customer must be able to bear the risks of the constituent securities even if the recommended transaction is limited to the purchase of the whole unit, such as a SuperUnit, and does not specifically recommend separating the unit into its component parts, such as SuperShares.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission believes that providing for the exchange trading of securities issued by unit investment trusts based on a portfolio of stocks in a broad-based stock market index or a portfolio of money market instruments will offer a new and innovative means of participating in the securities markets. In particular, the Commission believes that the trading of SuperUnits and SuperShares will accord investors flexibility in shaping their investment needs by providing (1) the means to trade open-end mutual funds on the secondary market, and (2) a mechanism to separate a stock or money market investment into component pieces.[21] For example, investors of SuperUnits will have similar risks as holders of money market and mutual fund holders but will have the added benefit of being able to dispose of their investment in the secondary market in addition to still being able to redeem their shares.

Moreover, the ability of investors to split an Index or Money Market SuperUnit into SuperShares representing the respective income and appreciation portion of the SuperUnit should provide investors with flexibility to meet their investment needs. For example, an investor interested in maintaining low risk could hold on to the income portion and sell the appreciation portion in the secondary market. Investors who can bear the risks of the Appreciation and Protection SuperShares also will have the ability to obtain differential rates of return on a capital outlay if the S&P 500 Index moves in a favorable direction above or below a specified amount.[22]

While SuperUnits (representing a whole UIT interest) are analogous to open-end index and money market funds, SuperShares (representing the components of a SuperUnit) are hybrid derivative securities having certain option-like characteristics and risks. Accordingly, the Commission has reviewed carefully the Amex's proposal to ensure that the rules for trading UIT

[18] See note 8 *supra*.

[19] In addition, under Exchange Rule 117, trading in SuperUnit securities would be halted for one hour if the Dow Jones Industrial Average ("Average") is calculated at a value of 250 or more points below its closing value on the previous trading day ("Closing Value"), and for two hours if, on the same day, the Average is subsequently calculated at a value of 400 or more points below its closing value.

[20] See Amex Rules 421 and 924.

[21] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[22] For example, investors could use the Protection SuperShare to hedge against the possibility that the value of the S&P 500 Index will be less than a specific amount. Of course, if the S&P 500 Index moves in the wrong direction, the Protection and Appreciation SuperShares will expire worthless and the investors will have lost their entire investment.

securities and their component parts, including SuperUnits, maintain and meet the Act's Requirements for adequate investor protection.[23]

Because UIT securities (including SuperUnits) can be divided into component parts, some of which may involve a level of risk that is greater than the level of risk involved with traditional mutual fund securities, the Commission has several specific concerns regarding the trading of these securities. In particular, these UIT securities raise customer suitability, disclosure, and secondary market trading issues that must be addressed adequately. In this regard, as discussed in detail below, the Amex has proposed safeguards that are designed to meet these investor protection concerns.

First, the Amex has addressed customer suitability concerns by proposing to add Commentary .04 to Exchange Rule 411. As noted above, Commentary .04 would require a broker recommending a purchase of a unit investment trust security product (i.e., securities issued by a unit investment trust and any distinct trading components of those securities) to determine that all aspects of the product, including its component parts, are not unsuitable for the customer and that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and special characteristics of the recommended transaction. The Rule also requires that the recommending broker determine that the customer has the financial ability to bear the risk of the component parts, even if the recommendation is limited to purchasing a whole UIT interest rather than any of the component securities. This suitability standard is almost identical to the one that is applied and recommended for options products.[24]

As applied to the "SuperTrust" product (i.e., SuperUnits and SuperShares), the Commission believes that the use of an options-like suitability standard to a recommendation to establish a position (either long or short) in a SuperUnit or a SuperShare will provide protection that the recommendation only will be made to those investors who can evaluate and bear the risks of the component securities. The Commission believes that applying this suitability standard to the entire product is necessary because a purchase of a SuperUnit always involves the potential to separate the SuperUnit later into component securities.[25]

Second, the Commission has reviewed the appropriate account approval standards. For example, in order to trade options an investor's account must be approved for options trading.[26] The Amex has not proposed to require or recommend that UIT securities, including SuperShares, be sold only to options approved accounts. The Commission finds this acceptable because (1) the SuperUnits and SuperShares have some aspects that are more akin to equity than to options; and (2) the Amex has developed other adequate customer protection rules applicable to transactions in these products. For example, the Amex has proposed to require that discretionary transactions in UIT securities be approved by a Senior Registered Options Principal, a Registered Options Principal, or a Person delegated such responsibility under Amex Rule 320(c)(i).[27] By requiring review of all discretionary transactions in UIT securities on the day the transaction is executed, in addition to special supervisory controls to open a discretionary account, the proposal will ensure that discretionary transactions are appropriate for the account and that the account suitability standards are being met. Moreover, as noted above, the Amex has proposed special, heightened suitability standards for these products.

In summary, the Commission believes that the options-like suitability standard applicable to the "SuperTrust" product and the special supervisory rules for discretionary transactions will provide adequate protection to investors. Accordingly, the Commission does not believe it is necessary to limit the sale of the "SuperTrust" product, which has characteristics of debt, equity and options, to only those investors that meet the account eligibility requirements for options trading. The Commission emphasizes, however, that recommendations for SuperShares should be limited to investors who would qualify for options trading if they were to seek qualification.

Third, the Amex has addressed customer disclosure concerns by requiring, under proposed Commentary .04, that Amex members provide customers with an explanation of any special characteristics and risks attendant to trading UIT securities. With respect to the "SuperTrust" product, section 5(b)(2) of the Securities Act of 1933 and section 24(d) of the Investment Company Act of 1940 require that SuperUnit secruities intended for sale or delivery after sale be accompanied by a statutory prospectus. Accordingly, the Commission believes that investors in UIT securities, in general, and in SuperUnit securities, in particular, will be provided with adequate disclosure.

Fourth, the Amex has addressed any market impact concerns in its proposal. Specifically, the Amex proposal only permits the listing of UIT securities on a portfolio of stocks if the stock market index on which it is based is a broad-based index that the Commission has reviewed and approved in another context. Accordingly, because the index on which a UIT interest would be based already would be the subject of derivative instruments, the Commission believes it is less likely that the listing and trading of UIT securities would adversely impact U.S securities markets.[28] Moreover, in the case of the

[23] In reviewing the Amex proposal, the Commission recognized that the Amex is initially proposing to trade only the SuperUnits. Because SuperUnits continually are separable into SuperShares, and the Amex's proposed listing guidelines for UIT securities are broad enough to permit the trading of component securities, the Commission believes it is appropriate to ensure that Amex rules adequately protect investors trading in SuperUnits and SuperShares.

[24] See eg. Amex Rule 923.

[25] In a letter from James F. Duffy, Senior Vice President and General Counsel, Legal & Regulatory Policy Division, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated August 23, 1990, the Amex stated that it understood that the options-like suitability standard was being applied to the SuperUnits because of their separability into component securities (i.e., SuperShares). The Amex stated that it did not believe that a heightened suitability standard would apply to UIT securities that were not separable into component securities. While the Commission does not believe that a heightened suitability standard necessarily should be applied to non-separable UIT securities, it is impossible to predetermine the appropriate suitability standard for every potential new product. Thus, in the event Amex decides to list a non-separable UIT security, to fulfill its regulatory responsibilities under the Act, it would have to determine the appropriate suitability standard necessary for the protection of investors.

[26] These rules require member firms, among other things, to make certain inquiries about a customer's financial situation and investment objectives and verify, and maintain records containing, this background and financial information.

[27] As discussed in "Trading of UIT Securities," *supra*, Amex rules require discretionary orders in options-approved accounts to be approved by a Senior Registered Options Principal or a Registered Options Principal and discretionary orders in other accounts to be approved as provided in Amex Rule 320(c)(i).

[28] The Amex, of course, could submit proposals pursuant to section 19(b) to trade UIT interests based on other types of indexes. This will provide the Commission an opportunity to determine if a particular index raises potential manipulation or orther trading abuse concerns. See Securities Exchange Act Release No. 26152 (October 3, 1963) 53 FR 39832 (October 12, 1988) (order approving listing and trading rules for index warrants). The Commission believes this approach is appropriate and consistent with its policy on the trading of other types of index products.

"SuperTrust" product, the Commission notes that a variety of derivative instruments currently trading, including index options and index futures contracts, are based on the S&P 500 Index. The "SuperTrust" product does not contain features that make it likely to impact by itself the U.S securities markets.

Finally, the Commission finds that the Amex has designed adequate rules and procedures to govern the trading of UIT securities, including SuperShares. Specifically, the Commission believes that the Amex's rules governing the trading of UIT securities provides adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. The Commission also finds that permitting the trading of UIT interest until 4:15 p.m. New York Time, which corresponds to the close of trading for stock index options, is appropriate.

The Commission finds good cause for approving amendment no. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that the trading hours provided for in this amendment are identical to the trading hours proposed to be applied to the trading of UIT securities on the CBOE.[29] The Commission notes that no comments were received in connection with this proposal. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve this portion of the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning amendment no. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchanges Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 23, 1992.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–90–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–4763 Filed 2–28–92; 8:45 am]

BILLING CODE 8010–01–M

[29] This proposal was noticed in Securities Exchange Act Release No. 28132 (June 19, 1990), 55 FR 26038 (June 26, 1990).

[30] 15 U.S.C. 78s(b)(2) (1988).

[31] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–30401; File No. SR–BSE–92–01]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Specialist Performance Evaluation Program

February 24, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 14 U.S.C. 78s(b)(1), notice is hereby given that on February 5, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and this order grants accelerated approval of the BSE's proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to extend for an additional one year period the operation of the Exchange's Specialist Performance Evaluation Program ("SPEP").[1]

[1] On February 26, 1991, the Commission granted accelerated approval to the BSE's proposal to renew the SPEP pilot program for a one-year period, ending on February 26, 1992 see Securities Exchange Act Release No. 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991). Prior to February 26, 1991, the Commission last approved the Exchange's SPEP pilot on January 30, 1990 for a one-year period (see Securities Exchange Act Release No. 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990)).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The BSE orginially filed its SPEP pilot program with the Commission on September 28, 1984.[2] Because the commission still is reviewing whether to grant permanent approval to the Exchange's proposal, the BSE is submitting this filing to request that the current pilot program be extended for a one-year period in order to enable the Exchange to maintain the program, pending permanent approval by the Commission.

Statutory Basis

The basis under the Act for the proposed rule change is section 6(b)(5),[3] in that the questionnaire results weigh heavily in stock allocation decisions and as a result specialists are encouraged to improve their market quality and administrative duties, thereby promoting just and equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

[2] See Securities Exchange Act Release No. 22093 (March 10, 1986), 51 FR 8928 (March 14, 1986) (approving File No. SR–BSE–84–04).

[3] 15 U.S.C. 78f(b)(5) (1988).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–92–01 and should be sumbitted by March 23, 1992.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that specialist units play a crucial role in providing stability, liquidity and continuity to the trading of stocks in an auction market system. Thus, it is critical to an efficient marketplace that the Exchange conduct effective oversight of specialist performance. Essential to this oversight is the Exchange's SPEP.

The Exchange's SPEP consists of a Specialist Performance Evaluation Questionnaire ("questionnaire") which is administered every four months and is completed by floor brokers, specialists acting as floor brokers in their non-specialty stocks and certain other qualifying clerks. The questionnaire currently contains 12 questions, 8 of which are weighted. Each respondent is requested to grade a specialist's performance in the area addressed by each question. Further, the Exchange uses a nine point grading scale to rate specialist performance.

Specialist units whose performance falls below certain threshold levels of acceptable performance are subject to performance improvement actions. These actions are triggered in the event a specialist unit receives (1) an overall average grade below 4.5 on the questionnaire, or (2) an average grade below 4.5 for one question for two of three consecutive evaluation periods. Specialists units coming under one of these two categories are requested to meet informally with a Performance Improvement Subcommittee ("Subcommittee"). In this meeting, the Subcommittee discusses the unit's poor performance and possible measures to improve the specialist's performance during the subsequent evaluation period. The meeting is voluntary and a specialist unit may elect not to attend.

A mandatory meeting with the Market Performance Committee ("MPC") is required in the event a specialist receives an overall grade below 4.5 on the questionnaire for two of three successive evaluation periods, or if the unit receives a grade of 4.5 on one question in one out of two evaluation periods subsequent to meeting the conditions for an informal review by the Subcommittee.

The MPC may impose the following sanctions upon a unit following a mandatory hearing: (1) Withdraw Exchange approval of a member's registration as a specialist in one or more stocks, (2) reduce the percentage of stocks that may be protected by a specialist when new specialist books are allocated (all specialists are obligated to reserve 10% of their specialty stocks for acquisition by new specialists developing a book), or (3) suspend the specialist's trading account. BSE Rules also permit the MPC to impose any other performance improvement actions it deems appropriate to improve a unit's performance.[4]

On February 26, 1991 and again on March 8, 1991, the Exchange filed reports with the Commission describing its experience with the SPEP pilot program for the four quarters in 1990.[5] According to the BSE's reports, no specialist units were subject to a performance improvement action during this time period. The Exchange's reports state that there was one specialist who received an average grade below 4.5 for one question in the last review period ending December, 1990, but no action was taken against this specialist because the SPEP provides that, in order to invoke a meeting with the Subcommittee, an average grade below 4.5 for one question must occur in two out of three successive review periods. At the time of the reports, this specialist had received the low average grade in only one review period. In addition, no specialist unit received an overall average grade below 4.5 on the questionnaire.

The Commission finds that the BSE's proposed rule change to extend the SPEP pilot program for an additional year is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. In this regard, the Commission believes that the extension of the pilot furthers the protection of investors and the public interest because it allows for the continued evaluation of specialist performance while the Commission considers the Exchange's request for permanent approval of the SPEP.[7]

Further, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that it is necessary to extend the pilot program's operation while the Commission considers the Exchange's proposal to approve the pilot program on a permanent basis so that the program can continue on an uninterrupted basis. The Commission believes, therefore, that accelerated effectiveness of the extension of the pilot program for an additional one-year term is appropriate. The Commission also notes that the substance of the proposal was published in the **Federal Register** previously and no comments on the proposal were received by the Commission.[8]

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act[9] that the

---

[4] See Securities Exchange Act Release No. 26162, (October 6, 1988), 53 FR 40301 (October 14, 1988) (approving File No. SR–BSE–87–6) for a more detailed description of the BSE's specialist performance evaluation program.

[5] See letters from Karen A. Aluise, Regulatory Review Specialist, BSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 22, 1991 and March 5, 1991. Although the two reports discuss the results of the SPEP for the four quarters in 1990, the most recently filed report provides a fuller review of the SPEP's results.

[6] 15 U.S.C. 78f (1988).

[7] The Commission reiterates the request stated in Securities Exchange Act Release No. 26162, *supra* note 4, that the BSE submit objective measures of market making performance to the Commission as soon as possible pursuant to section 19(b) of the Act. The Commission also requests that the BSE submit a report to the Commission describing its experience with the pilot by March 30, 1992. The report should detail, for the four quarters in 1991, questionnaire results for all specialist units, as well as any actions taken by the Subcommittee or MPC in response to the scores. Any modifications to the current questionnaire also should be submitted to the Commission as a proposed rule change pursuant to section 19(b) of the Act.

[8] See Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8928 (March 14, 1986).

[9] 15 U.S.C. 78s(b)(2) (1988).

proposed rule change be, and hereby is, approved for a one year period ending on February 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-4698 Filed 2-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30393; File No. SR-CBOE-90-13]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.

February 21, 1992.

In the matter of Order Approving Proposed Rule Change, Including Amendments No. 1 and 2, and Filing and Order Granting Accelerated Approval to Amendments No. 3, 4, 5, 6, and 7 to the Proposed Rule Change, Relating to Listing Guidelines for Certain Unit Investment Trusts and the Listing of Unit Investment Trusts Sponsored by SuperShare Services Corporation

I. Introduction

On May 25, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of securities issued by certain unit investment trusts, including the securities issued by unit investment trusts sponsored by SuperShare Services Corporation ("SSC"), a majority owned subsidiary of Leland O'Brien Rubinstein Associates Incorporated ("LOR").[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28132 (June 19, 1990), 55 FR 26038 (June 26, 1990). No comments were received on the proposed rule change.[4]

II. Description of Proposal

A. Listing Requirements for Unit Investment Trusts

The Exchange is proposing to adopt rules that establish listing criteria for unit investment trust securities ("UIT Interests") based upon a portfolio of stocks included in a broad-based stock market index, and/or a portfolio of money market instruments or other debt securities.[5] Under the CBOE proposal, these unit investment trusts may operate on an open or closed end basis.[6]

Under the proposal, a unit investment trust must have total assets of at least $60,000,000 at the time of formation and have a minimum public distribution of 1,000,000 shares, units, or other trading components held by 400 holders (beneficial and/or record holders). In addition, the stated term of a unit investment trust may not be less than two years.[7] As regards to the trustee of a unit investment trust on which a UIT interest is based, such trustee must be a trust company or banking institution having substantial capital and surplus.[8] Fourth, any right to vote which is conferred by a security issued by a unit investment trust may be divided between the separate components of the units and must be "passed through" to the beneficial holders of the UIT interests.

Under the proposal, the Exchange will consider the suspension of trading in or removal from listing of the securities of a unit investment trust if further dealings in such securities appear unwarranted due to any of the following circumstances: the trust has more than 60 days remaining until termination and there are less than 50 record and/or beneficial holders of shares, units or trading components thereof for 20 or more consecutive trading days; there has been a failure on the part of the trust and/or sponsor to comply with the CBOE's listing policies or agreements; or such other event occurs or condition exists that, in the CBOE's opinion, makes further dealings on the Exchange inadvisable.[9]

B. Listing of Unit Investment Trust Sponsored by Supershare Services Corporation

The CBOE will consider listing UIT interests on a case-by case basis. Currently, the CBOE proposes to list the component securities of an open end unit investment trust sponsored by SSC, a majority owned subsidiary of Leland O'Brien Rubinstein Associates Incorporated. [10] This unit investment trust will be named "SuperTrust" and initially will consist of two separate trusts, the Index Trust and the U.S. Treasury Money Market Trust ("Money Market Trust"). For an initial investment of at least $10,000, an investor may purchase shares of either the Index Series or the U.S. Treasury Money Market Series of the Capital Market Fund, Inc. ("Fund"), which is an open-end management investment company organized as a series fund under the Investment Company Act of 1940. Fund shares will not be exchange-traded. Throughout the life of the SuperTrust, holders of shares of the Index Series of the fund will be able to tender shares with a minimum net asset value of $5,000 for deposit into the Index Trust and receive, in exchange, Index Trust SuperUnit securities ("Index Trust SuperUnits"). Similarly, holders of shares of the U.S. Treasury Money Market Series of the Fund will be able to tender shares with a minimum net asset value of $5,000 for deposit into the Money Market Trust and receive, in

---

[10] 17 CFR 200.30-3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) 1988.

[2] 17 CFR 240.19b-4 (1991).

[3] The CBOE proposes to trade SuperShare securities that will be issued by SSC. *See* discussion, at "Listing of Unit Investment Trust Sponsored by SSC," *infra*, for a detailed description of SuperUnit and SuperShare securities that are based on the Standard & Poor's 500 Composite Stock Price Index (S&P 500 Index) and U.S. Treasury money market instruments.

[4] The proposal was amended on July 30, 1990 and August 21, 1990 to clarify, among other things, that the stock market index on which unit investment trust securities may be based must be a broad-based stock market index that is of the type the Commission previously has reviewed and approved for index products and to amend the customer suitability standard. The amendments to the rule filing were published for comment in Securities Exchange Act Release No. 29382 (August 28, 1990) 55 FR 36369 (September 5, 1990). No comments were received on the amendments. The proposal also was amended on October 12, 1990, and October 23, 1990 to reduce the unit of trading from 100 to 10 SuperShares and to preserve current Exchange requirements that securities that are convertible, into securities in which the member makes a market, be treated as non-market-maker positions for margin purposes, respectively. The proposal was amended again on August 21, 1991 to increase the margin requirements applicable to SuperShares, in addition to permitting covered writing of S&P 500 options using SuperUnits and SuperShares. The proposal was amended again on December 18, 1991 to require that CBOE members provide a prospectus to an investor in connection with each transaction in SuperShares. Finally, an amendment was submitted on February 7, 1992 to correct certain typographical errors made in the proposal.

[5] The index would have to be one that the Commission previously had approved for trading a derivative contract.

[6] UIT interests are defined in the proposed CBOE rules as any share, unit, or other interest in or relating to a unit investment trust, including the component resulting from the subdivision or separation of such an interest.

[7] A unit investment trust, however, may be terminated before two years under certain circumstances, as specified in the trust's governing documents.

[8] The amount of capital and surplus will be identified in an undertaking from the trustee to the Exchange. In addition, a trustee of a unit investment trust may not have an executive officer who is also an officer of the issuing sponsor, and the trustee and issuer may not be under common control. A change in the trustee also may not be made without prior notice to and approval of the Exchange.

[9] Any decision to suspend trading in or remove from listing the securities of a unit investment trust will be made pursuant to Exchange rules.

[10] The CBOE is proposing to list the SuperShare securities that result from te separaton of the SuperUnit securities issued by the Trust. Concurrently with approval of the CBOE proposal, the Commission has approved a proposal by the American Stock Exchange, Inc. ("Amex") to list the SuperUnit securities. *See*, Securities Exchange Act Release No. 30394.

exchange, U.S. Treasury Money Market Trust SuperUnit securities ("Money Market Trust SuperUnits").[11] Index Trust and Money Market Trust SuperUnits are redeemable units of beneficial interest investing in the Index Series and U.S. Treasury Money Market Series of the Fund, respectively.[12] Both the Index Trust and the Money Market Trust will operate on an open-end basis with no maximum number of holders.

Upon payment of a separation fee, holders may separate their SuperUnits into four distinct securities called SuperShares.[13] Index Trust SuperUnits can be separated into an Appreciation SuperShare and a Priority SuperShare. The Appreciation SuperShare represents an interest in the potential capital appreciation of the Index Trust SuperUnit by providing the holder with the right to receive at termination of the Index Trust any portion of the net asset value of the SuperUnit that exceeds a specified amount.[14] The Priority SuperShare gives the holder the right to receive all dividends paid on the Index SuperUnit and on termination the net asset value of the Index Trust SuperUnit, less an amount equal to what the Appreciation SuperShare is entitled. On termination, payments ordinarily will be made in shares of the Index Series of the Fund.

The Money Market Trust SuperUnit can be separated into a Protection Supershare and an Income and Residual Supershare. The Protection Supershare is designed to permit its holder to hedge against the possiblity that the value of the S&P 500 Index will be less than a specified amount at the termination of the Money Market Trust. If the Index Trust SuperUnit at the termination of the Money Market Trust is less than a specified amount, the holder will receive an amount equal to the deficiency, with a cap at a certain level.[15] The Income and Residual SuperShare represents the right to receive at termination the net asset value of the SuperUnit less an amount equal to what the Protection SuperShare is entitled.[16] On termination, payments ordinarily will be made in shares of the U.S. Treasury Money Market Series of the Fund.[17]

SuperUnits may be redeemed at any time for an in-kind distribution of Fund shares.[18] SuperShares cannot be redeemed separately, but complementary SuperShares may be recombined into SuperUnits and then redeemed into Fund shares.

C. Trading Rules for UIT Interests

The CBOE proposal includes rules to govern the trading of UIT interests.[19] First, the CBOE proposal amends current Exchange rules governing the application of trading halts. Specifically, the CBOE proposal would amend Exchange Rule 6.3 authorize Floor Officials, when determining whether to halt trading in UIT interests based on a stock index ("index UIT interests"), to consider whether trading in index options has been halted pursuant to the provisions of Exchange Rule 24.7.[20] The proposal also amends Exchange Rule 6.3A to specify that trading in index UIT interests will be halted whenever trading in index options is halted under the rule's provisions. Under Rule 6.3A trading in index options is halted whenever the trading of all stock on the New York Stock Exchange ("NYSE") has been halted or suspended as a result of the activation of circuit breakers on the NYSE.[21]

Second, the CBOE is proposing to apply its current multiple market-maker system of trading to the trading of UIT interests. In addition, the CBOE proposes to amend current Exchange rules relating to market maker trading of UIT Interests. Specifically, the current proposal would amend Exhange rules that require a market maker to obtain a single Letter of Guarantee from a clearing member, and instead would permit a market maker to obtain separate Letters of Guarantee to cover the specific securities to be traded by the market maker, including UIT interests. Permitting a market maker to obtain separate Letters of Guarantee will make it easier for market makers to acquire Letters of Guarantee for new products, while providing clearing firms with discretion in determining for which products they will issue these letters.

The current proposal also amends existing Exhange Rule 8.8 which generally prohibits a member from acting in both a principal and agency capacity on the same business day with respect to any of the securities traded at a given station on the floor of the Exchange. Interpretation and Policy .02 to Rule 8.8 would be amended to add UIT interests to the list of index related products (such as index options, market baskets, index participations, and index warrants) based on the Standard & Poor's 100 Composite Stock Price Index ("S&P 500 Index") or that Standard & Poor's 500 Composite Stock Price Index ("S&P 500 Index") that would be deemed to be related to each other, so that a member could not act as a market maker and as a floor broker in any of the foregoing securities on the same business day.

Third, the proposal adds to the CBOE Rules a new chapter XXX that contains

[11] The commencement of the exchange offer of Fund shares for SuperUnits is conditioned upon an aggregate of two billion dollars in subscriptions for the Index Trust and the Money Market Trust SuperUnits and the satisfication of the Amex and the CBOE listing standards. SSC represents that if these conditions are not met, all subscriptions will be cancelled and no Fund shares, SuperUnits or SuperShares will be issued.

[12] The exchange offer will continue until the SuperTrust termination date and may be terminated or suspended only under the limited circumstances described in the 5th Amended and Restated Application pursuant to section 6(c) of the 1940 Act ("Application"), namely, Trust delisting from the Amex, termination based on a Commission order, or when the net asset value of the Index Trust SuperUnits exceeds the Termination Date Amount for such units.

[13] The voting rights of a SuperUnit will be divided equally between the SuperShares that together comprise the SuperUnit.

[14] The Appreciation SuperShare has characteristics that are similar to a call option (or warrant). As noted above, the holder is entitled to the amount the Index SuperUnit exceeds a pre-stated specified amount. This amount is similar to a strike price. If the market outperforms the "strike price," as with any call index option, the owner is entitled to the difference.

[15] The Protection SuperShare has characteristics that are similar to a put option (or warrant) spread. As noted above, the holder is entitled to recieve the amount the value of the Index SuperUnit is less than a pre-established specified amount, with a cap at a certain level. The specified amount and cap level are analogous to strike prices.

[16] The Income and Residual SuperShare is an extremely complex component of the Money Market SuperUnit. Investors shoud be informed that the returns on the Income and Residual SuperShare are linked to the value of the S&P 500 Index although they are components of the Money Market SuperUnit. Accordingly, CBOE members recommending transactions in SuperUnits or SuperShares should be careful to give a clear and concise description of the Income and Residual SuperShare.

[17] *See* note 14 *supra*.

[18] SSC has reserved the right to redeem in cash or in a combination of cash and Fund shares.

[19] The majority of these rules originally were filed with the Commission to govern the trading on the Exchange of stocks, warrants, and other securities instruments and contracts, on either a listed or an unlisted basis. *See* File No. SR-CBOE-90-08. The Commission approved this proposal on October 19, 1990. *See* Securities Exchange Act Release No. 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990). This order approves the application of these rules to the trading of UIT interests.

[20] CBOE Rule 24.7 states that trading in index options can be halted when, among other things, trading has been halted or suspended in underlying stocks that have a weighted value representing 20% or more of the index value, the current calculation of the index derived from the current market prices of the stocks is not available, or other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Rule 24.7 further requires that trading in a class of stock index options be halted when it has been determined that the trading of futures on the same or a closely realted stock index has been halted due to a decline of 30 S&P 500 Index points from the closing value of the previous trading day.

[21] NYSE rules currently provide for a one hour trading halt if the Dow Jones Industrial Average ("DJIA") declines 250 points from the previous day's closing value and a two hour trading halt if the DJIA declines 400 points from the previous day's closing value.

rules that are applicable to the trading of UIT interests. These rules originally were proposed by the CBOE to govern the trading of stocks, warrants, and other securities instruments and contracts.[22] The current proposal applies these rules to the trading of UIT interests. Under the proposal, however, UIT interests also will be subject to the rules in chapters I through XIX to the same extent as those rules apply to option contracts unless the rules are replaced by the rules in new chapter XXX, or the context otherwise requires.

Specifically, the proposed rules in new chapter XXX establish the hours of trading for UIT interests to be the same as the hours provided in CBOE Rule 24.6 for index options. These hours currently are 8:30 a.m. Chicago time until 3:15 p.m. Chicago time. Further, these proposed rules govern the making of bids and offers on UIT interests, the priority and precedence of bids and offers on UIT interests, the trading by market makers of UIT interests, and the inputting of quotations on the Exchange quotation system. These proposed rules also specifically provide that the unit of trading for SuperShares will be ten SuperShares.

In addition, the current proposal sets forth non-market maker margin requirements specifically for the SuperShares that are proposed to be traded. The minimum initial margin requirement for any long position in the Appreciation, Protection, and Income and Residual SuperShares would be 100% of the current market value. The minimum initial margin requirement for any long position in the Priority SuperShare would be 50% of the current market value since this position is equivalent to having a covered write and thus should be accorded equivalent margin treatment. For any SuperShares sold short, the minimum initial margin requirement would be 50% of the current market value plus 100% of the sale proceeds. The proposed rule further provides that the minimum amount of maintenance margin shall be 25% of the current market value of all SuperShares held long in the non-market maker's account, plus $2.50 per SuperShare or 100% of the current market value, whichever amount is greater, of each SuperShare held short in the account having a current market value of less than $5, plus $5 per SuperShare or 30% of the current market value, whichever amount is greater, of each SuperShare held short in the account having a current market value of $5 or more.

[22] *See* note 18 *supra.*

The proposal also provides that margin is not required to be deposited for a call options contract on a S&P 500 market index carried in a short position as long as there is deposited in the same account a long position, having an aggregate market value at least equal to the underlying value of the S&P 500 contracts needing to be covered, in one of the following: (1) The Index SuperUnit; (2) a combination of the Priority and the Appreciation SuperShares; or (3) the underlying open end index mutual fund, specifically designated by the Exchange. To receive this margin treatment for S&P 500 options, the proposal requires that the total aggregate market value of the underlying position in SuperUnits, SuperShares, or Fund shares be at least equal to the aggregate current value of the S&P option being covered. Further, it the non-market maker is covering an S&P 500 option with the Appreciation and Priority SuperShares, the non-market maker is required to maintain an equal number of Appreciation and Priority SuperShares. In its filing, the CBOE states that SuperUnits and SuperShares are appropriate cover for S&P 500 options contracts and that their value will more than cover any margin call on an S&P 500 options position.

For the purpose of market maker margins, the proposal permits Fund shares and SuperUnits to be used as offset positions for SuperShares. The proposal also permits market makers to enter into offset transactions as defined under § 220.12(a) of Regulation T of the Board of Governors of the Federal Reserve System for UIT interests, including SuperShares. These requirements are similar to the requirements for options market makers.

Further, the proposal contains rules, to be included in New chapter XXX, that govern a CBOE member's conduct in transacting business with the public. Specifically, proposed Rule 30.50 governs the opening and the supervision of customer accounts by a member organization. Proposed Interpretation and Policy .04 to proposed Rule 30.50 provides that discretionary transactions in UIT interests are subject to the provisions of CBOE Rule 9.10, which governs a member organization's exercise of discretionary authority with respect to options transactions in a customer's account. That Rule would require the approval by a Senior Registered Options Principal for the member organization to have discretionary authority to trade UIT interests for any customer account. Rule 9.10 further requires that all discretionary orders in UIT Interests be initialed by a Registered Options Principal on the day the transaction is executed.

Finally, the current proposal sets forth the customer suitability standards applicable to UIT interests. First, Interpretation and Policy .03 to proposed Rule 30.50 requires that customers be provided with an explanation of any special characteristics and risks attendant to trading UIT interests. The CBOE has stated that the Exchange will circulate to its membership information describing any such characteristics and risks about trading commences in a UIT interest.

Second, CBOE rules would provide that before an Exchange member organization or an officer, partner, or employee of the member organization recommends a transaction in the component securities resulting from the subdivision or separation of any UIT interest or in units that may be divided into the component securities, a determination must be made that the component securities or units are not unsuitable for the customer. The rule proposal further provides that the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction and consitutent securities. This would mean that a customer must be able to bear the risks of the constituent securities even if the recommended transaction is limited to the purchase of the whole unit, such as a SuperUnit, and did not specifically recommend separating the unit into its components, such as SuperShares.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission believes that providing for the exchange trading of securities issued by unit investment trusts based on a portfolio of stocks in a broad-based stock market index or a portfolio of money market instruments will offer a new and innovative means of participating in the securities markets. In particular, the Commission believes that the trading of SuperUnits

and SuperShares will give investors flexibility in shaping their investment needs by providing (1) the means to trade open-end mutual funds on the secondary market, and (2) a mechanism to separate a stock or money market investment into component pieces.[23] For example, investors of SuperUnits will have similar risks as holders of money market and mutual fund holders but will have the added benefit of being able to dispose of their investment in the secondary market in addition to still being able to redeem their shares.

Moreover, the ability of investors to further split an Index or Money Market SuperUnit into SuperShares representing the respective income and appreication portion of the SuperUnit should provide investors flexibility to meet their investment needs. For example, an investor interested in maintaining low risk could hold on to the Priority SuperShare and sell the Appreciation SuperShare in the secondary market. Investors who can bear the risks of the Appreciation and Protection SuperShares also will have the ability to obtain differential rates of return on a capital outlay if the S&P 500 Index moves in a favorable direction above or below a specified amount.[24]

While SuperUnits (representing a whole UIT interest) are analogous to open-end index and money market funds, SuperShares (representing the components of a SuperUnit) are hybrid derivative securitites having certian option-like characteristics and risks. Accordingly, the Commission has reviewed carefully the CBOE's proposal to ensure that the rules for trading UIT interests and their component parts including SuperShares maintain, and meet the Act's requirements for, adequate investor protection.

The Commission has several specific conerns regarding the trading of UIT interests and, in particular SuperShares, that involve customer suitability, disclosure, and secondary market trading. In this regard, as discussed in detail below, the CBOE has proposed safeguards that are designed to meet these investor protection concerns.

First, the CBOE has addressed customer suitability concerns by proposing to add Interpretation and Policy .03 to proposed Rule 30.50. Interpretation and Policy .03 would require a broker recommending a purchase of a UIT interest product (*i.e.*, securities issued by a unit investment trust and any distinct trading components of those securities) to determine that all aspects of the product, including its component parts, are not unsuitable for the customer and that the customer has the financial ability to bear the risk of the product, including its component parts, even if the recommendation is limited to purchasing a whole UIT interest rather than any of the component parts. This suitability standard is substantially identical to the one that is applied to recommendations in options products.

As applied to the "SuperTrust" product (*i.e.*, SuperUnits and SuperShares), the Commission believes that the use of an options-like suitability standard to a recommendation to purchase or sell either a SuperUnit or a SuperShare will provide protection that the recommendation only will be made to those investors who can evaluate and bear the risks of the product as a whole including its component parts. The Commission believes that applying this suitability standard to the entire product is necessary because a purchase of a SuperUnit always involves the potential to separate the SuperUnit later into component securities.

Second, the Commission has reviewed the appropriate account approval standards. For example, in order to trade options an investor's account must be approved for options trading.[25] The CBOE has not proposed to require or recommend that UIT interests, including SuperShares, be sold only to options approved accounts. The Commission finds this acceptable because (1) the SuperUnits and SuperShares have some aspects that are more akin to equity securties than to options; and (2) the CBOE has developed other adequate customer protection rules applicable to transactions in these products. For example, the CBOE has proposed to apply CBOE Rule 9.10 to discretionary accounts for trading in UIT interests. By requiring review of all discretionary transactions in UIT interests on the day the transaction is executed, in addition to special supervisory controls to open a discretionary account, the rule will ensure that discretionary transactions are appropriate for the account and that the acocunt suitability standards are being met. Moreover, as noted above, the CBOE has proposed special, heightened suitability standards for these products. In summary the Commission believes that the options-like suitability standard applicable to the "SuperTrust" product and the special spervisory rules for discretionary transactions will provide adequate protection to investors. Accordingly, the Commission does not believe that it is necessary to limit the sale of the "SuperTrust" product, which has characteristics of debt, equity and options, to only those investors that meet the account eleigibilty requirements for options trading.

Third, The CBOE has addressed customer disclosure concerns by requiring, under proposed Interpretation and Policy .03 to Exchange Rule 30.50, that CBOE members provide customers with an explanation of any special characteristics and risks attendant to trading UIT interests. Further, the CBOE will require, under proposed Interpretation and Policy .05 to Exchange Rule 30.50, that all investors in Supershares be provided a prospectus, describing the SuperTrust and secruities issued by the Trust. Interpretation and Policy .05 states that unless the member organization has a system in place which will verify that they previously delivered a prospectus to each investor, it will require a prospectus to be delivered in conjunction with each transaction in Supershares. Accordingly, the Commission believes that investors in UIT interests, in general, and in "SuperTrust" securities, in particular, will be provided with adequate disclosure.

Fourth, the CBOE has addressed any market impact concerns in its proposal. Specifically, the CBOE listing requirements only permit the listing of UIT interests based on a portfolio of stocks if the stock market index on which it is based is a broad-based index that the Commission has reviewed and approved in another context. Accordingly, because the index on which a UIT interest would be based already would be the subject of derivative instruments, the Commission believes it is less likely that the listing and trading of UIT interests would adversely affect U.S. securities

[23] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[24] For example, investors could use the Protection SuperShare to hedge against the possibility that the value of the S&P 500 Index will be less than a specific amount. Of course, if the S&P 500 Index moves in the wrong direction, the Protection and Appreciation SuperShares will expire worthless and the investors will have lost their entire investment. Moreover, the appreication value of the Protection Supershare is capped, similar to a capped put option or a put spread.

[25] These rules require member firms, among other things, to make certain inquiries about a customer's financial situation and investment objectives and verify, and maintain records containing, this background and financial information.

markets.[26] Moreover, in the case of the "SuperTrust" product, the Commission notes that a variety of derivative instruments currently trading, including index options and index futures contracts, are based on the S&P 500 Index. Moreover, in many respects, the UIT interests are not as leveraged as standardized options or futures. Therefore, the UIT interests represent only an additional product based on broad U.S. stock indexes, and should not otherwise pose a special market impact concern.

Finally, the Commission finds that the CBOE has designed adequate rules and procedures to govern the trading of UIT interests, including SuperShares. Specifically, the Commission believes that the CBOE's rules governing the trading of UIT interests provides adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. The Commission also believes that these rules do not unduly restrict the marketplace, and should permit market-makers to create orderly and liquid markets in UIT interests.

The Commission finds good cause for approving amendment nos. 3 and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that the modifications to the proposal effected by these amendments are de minimis. First, amendment no. 3 reduces the trading unit of SuperShares from 100 to 10 units to standardize the trading of SuperShares with the trading of SuperUnits on the Amex. The Commission believes that the proposed trading unit size for SuperShares is appropriate.

Second, amendment no. 4 deletes a provision in the proposal that would have afforded market makers good faith margin treatment for securities convertible into those in which the member makes a market. Therefore, amendment no. 4 to the proposal merely reestablishes the application of existing CBOE margin rules which require market makers in SuperShares to margin their positions in SuperUnits as non-market maker positions. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve amendment nos. 3 and 4 to the CBOE's proposal on an accelerated basis.

Further, the Commission finds good cause for approving amendment no. 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that the modifications to the proposal effected by this amendment are consistent with the treatment of other similar products and do not raise new issues. For example, amendment no. 5 increases the margin requirements for long positions in the Appreciation, Protection, and Income and Residual SuperShares from 50% to 100% of their current market value.[27] The amendment also permits customers to received covered write margin treatment for S&P 500 options offset by the Index SuperUnit, a combination of the Priority and Appreciation SuperShare, or the underlying open end index mutual fund.

The Commission finds that these provisions are similar to Exchange margin requirements applicable to long options contracts. The Commission believes that because the Appreciation, Protection, and Income and Residual SuperShares have characteristics that are similar to options contracts, it is appropriate for the margin requirements applicable to these SuperShares to be similar to the margin requirements applicable to options contracts. The margin for short sales of SuperShares is identical to that for short sales of stock. This is reasonable given that the process and risks of shorting SuperShares resembles short sales of stock more so than writing options. The Commission also believes that permitting customers to offset S&P 500 options with the proper components of the SuperShares product is appropriate since any offset transactions would operate as a covered write and therefore would cover any margin obligation on an S&P 500 options position. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve amendment no. 5 to the CBOE's proposal on an accelerated basis since its provisions merely apply standard options margin treatment to SuperShares.

Finally, the Commission finds good cause for approving amendment nos. 6 and 7 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that amendment no. 6 merely codifies the Exchange's interpretation of requirements set forth in proposed Interpretation and Policy .03 to Exchange Rule 30.50, and contains no new requirements.[28] The provisions of proposed Interpretation and Policy .03 were published for comment on June 19, 1990.[29] The Commission further finds that amendment no. 7 merely corrects certain typographical errors made in the proposal. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve amendment nos. 6 and 7 to the CBOE's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning amendment nos. 3, 4, 5, and 6 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 23, 1992.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR-CBOE-90-13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-4761 Filed 2-28-92; 8:45 am]

BILLING CODE 8010-01-M

[26] The CBOE, of course, still could submit proposals pursuant to section 19(b) to trade UIT interests based on other types of indexes. This will provide the Commission an opportunity to determine if a particular index raises potential manipulation or other trading abuse concerns. *See* Securities Exchange Act Release No. 26152 (October 3, 1988) 53 FR 39832 (October 12, 1988) (order approving listing and trading rules for index warrants). The Commission believes this approach is appropriate and consistent with the its policy on the trading of other types of index products.

[27] The Commission received no comments on the original proposal that would have imposed less margin requirements.

[28] Letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Sharon Lawson, Special Counsel, Division of Market Regulation, SEC, dated October 11, 1990.

[29] See *supra* note 4 and accompanying text.

[30] 15 U.S.C. 78s(b)(2) (1988).

[31] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-30405; File No. SR-MSTC-92-02]

Self-Regulatory Organizations; Midwest Securities Trust Company; Filing and Immediate Effectiveness of a Proposed Rule Change Which Clarifies Certain Uses of the Participants Fund

February 25, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 5, 1992, Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to amend Article VI, rule 2, section 6 of its Rules to clarify the use of MSTC's Participants Fund in situations where a loss occurs due to the fault of MSTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies the use of MSTC's Participants Fund in situations where a loss occurs due to MSTC's fault. While the existing rules could be interpreted to permit the use of the Participants Fund to satisfy any loss suffered by MSTC, including a loss due to the fault of MSTC (*e.g.*, a loss resulting from the failure of MSTC to follow its own rules), this clearly is not MSTC's policy or the intent of the rules regarding the uses of a clearing fund.

[1] 15 U.S.C. 78s(b)(1).

MSTC currently has indemnification rules which apply to Participants under certain circumstances where MSTC is without fault.[2] Interpreting MSTC's Participants Fund rules as covering losses which result from MSTC's fault would be inconsistent with the policies intended by these existing indemnification rules. MSTC, therefore, believes that it is in the best interest of MSTC and its Participants to clarify immediately the rules regarding the use of the Participants Fund.

MSTC believes that the proposed rule change is consistent with section 17A(b)(3) of the Act in that it provides for the prompt, accurate, and efficient clearance and settlement of securities transactions and assures the safeguarding of securities and funds which are in the custody or control of MSTC or for which MSTC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to the file Number SR-MSTC-92-02 and should be submitted by March 23, 1992.

[2] *E.g.*, MSTC Rules, Article I, Rule 3, Section 2(b).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-4762 Filed 2-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30400; File No. SR-Phlx-91-44]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Exchange Rule 950, Section 3, Relating to the Composition and Appointment of Arbitration Panels

February 24, 1992.

On December 4, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Phlx Rule 950, section 3, regarding the composition and appointment of arbitration panels.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30115 (December 20, 1991), 56 FR 67349 (December 30, 1991).[4] No comments were received on the proposal.

[3] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The text of the proposed rule change was attached to the rule filing as Exhibit B and is available at the Phlx as well as at the Commission.

[4] This notice was incorrectly cited as Securities Exchange Act Release No. 30110 in the Federal Register.

Phlx Rule 950 generally governs Exchange arbitration proceedings and enumerates the procedures to be followed for all arbitrations, both member as well as public customer controversies.[5] Presently, section 3 of Rule 950 delineates the composition and appointment of arbitration panels for member controversies.[6] Specifically, an arbitration panel appointed to hear a member controversy must consist of a minimum of five persons where the amount in controversy does not exceed $100,000 and a minimum of seven persons where the amount in controversy exceeds $100,000. The panel members are selected by the Director of Arbitration [7] from a pool of 25 persons who comprise the Arbitration Committee, which is comprised of 15 persons associated with on-floor member or participant organizations and 10 persons associated with off-floor member or participant organizations.

The Exchange proposes to amend Phlx Rule 95, section 3, to establish procedures to be followed in the event of the absence of a panel member from an arbitration hearing. Specifically, the Phlx proposes to allow a pre-hearing conference or hearing on the merits to proceed despite the absence of no more than two panel members.[8] In addition, the Exchange proposes to add a new supplementary material provision, Commentary .01, to section 3 of Phlx Rule 950. The proposed commentary would require the Exchange to use its best efforts to secure the attendance of the entire appointed arbitration panel at scheduled proceedings. Accordingly, the Exchange stated that it would not schedule any hearing unless each and every arbitration panel member, at lest initially, agrees to attend the hearing on that assigned date and time.

The Exchange believes that this amendment will alleviate difficulties presently experienced in the administration of the member arbitration program. The Exchange notes that on several occasions panel members who agreed to serve failed to attend a hearing or cancelled an appearance with little advance notice. Under the current rule, the arbitration matter could not proceed without the entire panel present.

The Exchange further believes that the administration and resolution of filed disputes would be aided considerably by the implementation of the proposed amendment to Phlx Rule 950, section 3. The Exchange believes that allowing a member arbitration to proceed when one or two panel members absent will result in a member arbitration proceeding according to schedule. Accordingly, the Exchanges believes that the proposed amendment will enable the arbitration program to be operated pursuant to its original intent of providing a fair, equitable and speedy resolution for all claims submitted.[9] Absent the amendment, the Exchange believes the program will be subject to frequent delays in hearings with concomitant backlogs increasing in its docket.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission recognizes that despite Exchange efforts to confirm scheduled arbitration hearings with each panel member, absences of panel members nevertheless occur. The Commission also notes that the proposed rule change requires the Exchange to use its best efforts to secure the attendance of the entire panel at each proceeding. The Commission believes that allowing an arbitration to proceed as scheduled, as long as no more than two panel members are absent, should ensure that the resolution of arbitration matters is not delayed due to rescheduling. Preventing such delays should, in turn protect the public interest in exchange resolutions.

Additionally, eliminating scheduling delays should improve the speed and efficiency of arbitration, while maintaining its traditional qualities as an equitable forum for dispute resolution. Because the proposed rule change should aid in the efficient and just resolution of disputes between members, the Commission concludes that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade consistent with section 6(b)(5).

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–91–44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–4695 Filed 2–28–92; 8:45 am]

BILLING CODE 8010–01–M

---

[5] Member controversies include disputes between employees or registered representatives of a member firm and the member firm itself, as well as disputes between member firms, but do not involve public customers. See Phlx Rule 950, sections 6(a) and 9(a).

[6] Public customer arbitrations are conducted pursuant to Phlx Rule 950, sections 9 and 15, which, in part, describe the required composition of public customer arbitration panels.

[7] See Phlx Rule 950, section 2.

[8] Thus, in this situation, member controversies would be heard by panels of three and five Arbitration Committee members, depending on the amount in controversy.

[9] See *e.g.*, Securities Exchange Act Release No. 29352 (June 20, 1991), 56 FR 29511 (approving File No. SR–Phlx–90–03 amending Phlx Rule 950 in its entirety to conform with the Uniform Code of Arbitration).

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–30–3(a)(12) (1991).

[Rel. No. IC–18565; 812–7814]

Shearson Lehman Brothers Income Trust, et al.; Application

February 24, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Shearson Lehman Brothers Income Trust (formerly Shearson Lehman Brothers Intermediate Term Trust) (the "Trust"), and Shearson Lehman Brothers, Inc. ("Shearson Lehman Brothers").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order that would permit them to impose a contingent deferred sales charge ("CDSC") on redemptions of shares of the Trust, and to permit the Trust under certain circumstances to waive or apply credits against the CDDC.

FILING DATE: The application was filed on October 29, 1991, and amended on February 6, 1992. By letter dated February 21, 1992, applicant's counsel stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by

mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 20, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company that was organized as a business trust under the laws of the Commonwealth of Massachusetts on October 17,1991. The trust's boards of trustees is authorized to create separate series of an unlimited number of shares. To date, the board of trustees has created four such series: Shearson Lehman Brothers Limited Maturity Treasury Fund, Shearson Lehman Brothers Limited Maturity Municipals Fund, Shearson Lehman Brothers Intermediate Maturity California Municipals fund, and Shearson Lehman Brothers Intermediate Maturity New York Municipals Fund (the "Funds").

2. Shares of each Fund are distributed by Shearson Lehman Brothers, and affiliates of Shearson Lehman Brothers serve the Funds in various capacities.

3. The Trust offers shares subject to a maximum sales charge upon purchase of 1.25% (the "Upfront Charge") that is reduced on purchases of $50,000 or more and proposes to assess a 1% CDSC on certain redemptions of shares made within one year of their purchase.

4. The CDSC would be imposed on that portion of a redemption by a shareholder of any Fund that causes the current value of shares of the Fund held by the shareholder to fall below the total dollar amount of payments for the purchase of shares of the Fund (less any applicable Upfront Charge) made by the shareholder during the preceding year. All purchase payments (less any applicable Upfront Charge) for shares of a Fund made by a shareholder during a particular Shearson Lehman Brothers statement month will be aggregated and deemed to have been made on the last day of the current Shearson Lehman statement month for purposes of determining the amount of time that has elapsed since the purchase payments were made.

5. No CDSC would be imposed to the extent that the net asset value of the shares of the Fund redeemed by a shareholder does not exceed (a) the current net asset value of shares of the Fund purchased more than one year prior to the redemption ("Old Shares Value"), plus (b) the current net asset value of shares purchased through reinvestment of dividends or capital gains distribution ("Reinvestment Shares Value"), plus (c) increases in the net asset value of the shares above purchase payments (less any applicable Upfront Charge) made during the preceding year ("Appreciation Value").

6. In effecting a particular redemption request of shares made by a shareholder, the Trust would first redeem an amount that represents Appreciation Value. The Trust next would redeem an amount that represents Reinvestment Shares Value, and then an amount that represents Old Shares Value. The amount by which a redemption exceeds the total of Appreciation Value, Reinvestment Shares Value, and Old Shares Value would be subject to the CDSC.

7. In no event would the maximum amount of the CDSC assessed upon the redemption of shares plus the amount of any Upfront Charge paid with respect to the shares exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice adopted by the National Association of Securities Dealers, of which Shearson Lehman Brothers is a member.

8. The CDSC would be waived with respect to: (a) Automatic cash withdrawals by a shareholder in amounts equal to or less than 2% per month of the value of the shareholder's shares at the time that the shareholder's participation in the withdrawal plan commences; (b) redemptions of shares in connection with: (i) Lump-sum or other distributions from a qualified corporate or self-employed retirement plan following retirement, termination of employment, death, disability or following attainment of age 59½ of a plan participant, (ii) the hardship of a plan participant to the extent permitted under the Internal Revenue Code of 1986 (the "Code"), (iii) a loan made by a qualified corporate or self-employed retirement plan to a participating employee, (iv) distributions and withdrawals from retirement plans or individual retirement accounts ("IRAs") or custodial accounts under section 403(b)(7) of the Code following attainment of age 59½; and (v) a tax-free return of an excess contribution to an IRA; (c) redemptions of shares acquired as a result of an exchange into any Fund from any fund in the Shearson Lehman Brothers group of funds whose shares are sold subject to a sales charge upon purchase (the "Exchange Group of Funds"); (d) involuntary redemptions; (e) redemptions by (i) employees of American Express and its subsidiaries, including Shearson Lehman Brothers, IRAs for those employees, employee benefit plans for those employees, and the spouses and minor children of those employees when orders on their behalf are placed by the employees, (ii) accounts managed by investment advisory subsidiaries of American Express registered under the Investment Advisers Act of 1940, and (iii) directors, trustees or general partners of any investment company for which Shearson Lehman Brothers serves as distributor; and (f) redemptions made in connection with the combination of any Fund with any other investment company by merger, acquisition of assets, or otherwise. In accordance with rule 11a–3 under the Act, the Trust will not impose a CDSC on exchanges between any Fund and any other Fund or between the Fund and any fund in the Exchange Group of Funds.

9. No CDSC will be imposed on any shares purchased prior to the effective date of any order.

10. A shareholder who has redeemed shares of a Fund and who reinvests all or part of the redemption proceeds in shares of any other Fund within 180 days of the redemption will receive a proportionate credit (in the form of additional shares of the Fund into which the reinvestment is being made) for the CDSC imposed on the prior redemption. A shareholder who has redeemed shares of a Fund and who reinvests all or part of the redemption proceeds within 30 days of the redemption of shares of any fund in the Exchange Group of Funds will receive a proportionate credit (in the form of additional shares of the fund into which the reinvestment is being made) for any CDSC imposed on the prior redemption. In each case, the amount of the credit would be funded by Shearson Lehman Brothers out of a "house" account into which Shearson Lehman Brothers would maintain, on an ongoing basis, a portion of the proceeds

from CDSC's assessed to shareholders. The account will at all times be maintained in an amount sufficient to provide all credits to which shareholders are entitled.

11. Applicants request that any order cover any additional series of shares that the Trust may offer in the future on substantially the same basis as the Trust offers the shares of its existing series and any investment company registered under the Act, for which Shearson Lehman Brothers acts as distributor, that offers shares on substantially the same basis as the Trust offers shares of its existing series.

Applicants' Legal Analysis

1. Section 2(a)(32) of the Act defines a "redeemable security" as "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer * * * is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." Applicants note that the effect of the CDSC is merely to defer the deduction of a portion of a sales charge and to make it contingent upon an event that may or may not occur. The CDSC in no way restricts any of the shareholders of a Fund from receiving on redemption the shareholder's proportionate share of the Fund's current net assets.

2. Section 2(a)(35) of the Act defines the term "sales load" as the difference between the price of a security to the public and that portion of the proceeds from the sale of the security that is received and invested or held for investment by the issuer. Applicants note that the CDSC is functionally a sales charge because it is paid to Shearson Lehman Brothers to reimburse Shearson Lehman Brothers for expenses related to offering shares for sale to the public. Applicants assert, however, that the contingent nature of the CDSC in fact makes it potentially more advantageous to each of the Trust's shareholders. Applicants state that the deferral of the CDSC, and its contingency upon the occurrence of an uncertain event, does not change the nature of the CDSC, which is in every other respect a sales charge.

3. Applicants submit that the Trust's implementing the CDSC will be completely consistent with section 22(c) and rule 22c-1, which require a registered investment company issuing redeemable securities to redeem those securities at a price based on the current net asset value of the securities that is next computed after receipt of the tender of the securities for redemption. When a redemption of shares is effected, the price of the shares on redemption will be based on the current net asset value of the shares; the CDSC will merely be deducted at the time of redemption in arriving at the shareholder's redemption proceeds.

4. Section 22(d) of the Act prohibits an investment company registered under the Act from selling its redeemable securities other than at a current public offering price described in the company's prospectus. Rule 22d-1 under the Act exempts a registered investment company from the provisions of section 22(d) to the extent necessary to permit the sale of those securities to particular classes of investors or in various kinds of transactions at prices that reflect scheduled variations in, or elimination of, the sales load. Applicants note, however, that the Commission has suggested that the relief afforded by amended rule 22d-1 is not available with respect to CDSC's such as the one applicants are proposing. Thus, applicants are seeking an exemption to permit the Trust to provide for waivers from or credits against the CDSC in the situations described in this notice. Applicants believe that the exemption they are seeking from section 22(d) is consistent with the policies underlying the section.

Applicants' Condition

Applicants agree that the following condition may be imposed in any order of the Commission granting the requested relief:

Applicants will comply with the provisions of proposed rule 6c-10 under the Act, as currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-4696 Filed 2-28-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-92-5]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participant in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 17, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. 26722, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on February 25, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26722.

Petitioner: Burlington Air Express, Inc.

Sections of the FAR Affected: 14 CFR 91.801 through 91.875.

Description of Relief Sought: To permit the Stage 2 phase-out schedule to be applied to Burlington's fleet.

[FR Doc. 92-4736 Filed 2-28-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-6]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 23, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, February 25, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26120.
Petitioner: U.S. Department of the Interior.
Sections of the FAR Affected: 14 CFR 45.29.
Description of Relief Sought: To extend Exemption No. 5196, which allows the U.S. Department of the Interior to operate its Maule M-6-235 aircraft displaying 3-inch high nationality and registration marks (N-numbers) in place of the 12-inch high N-numbers required by the regulation.

Docket No.: 26703.
Petitioner: Soloy Dual Pac, Inc.
Sections of the FAR Affected: 14 CFR 21.19.
Description of Relief Sought: To allow Soloy Dual Pac, Inc., to obtain a Supplemental Type Certificate instead of obtaining a new Type Certificate, to install single powerplant, single propeller dual engine in the De Havilland DHC3 Otter aircraft airframe.

Docket No.: 26754.
Petitioner: Skydive City, Inc.
Sections of the FAR Affected: 14 CFR 105.43(d).
Description of Relief Sought: To allow non-student, foreign skydivers to use parachute equipment approved or accepted in their native countries while using Skydive City, Inc.'s facilities in the United States.

Docket No.: 25789.
Petitioner: Martin Aviation, L.P.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To extend Exemption No. 5202, which allows pilots employed by Martin Aviation, L.P. to perform the preventive maintenance functions of removing and replacing passenger seats on aircraft it operates under part 135 of the FAR.

Dispositions of Petitions

Docket No.: 20369.
Petitioner: World Jet Corporation, d/b/a/ Executive Jet New York.
Sections of the FAR Affected: 14 CFR 135.89(b)(3).
Description of Relief Sought/Disposition: To allow World Jet Corporation dba Executive Jet New York to fly its aircraft below flight level 410 without at least one pilot at the controls wearing a secured and sealed oxygen mask. Denial, February 5, 1992, Exemption No. 5403.

Docket No.: 21168.
Petitioner: Executive Air Fleet, Inc.
Sections of the FAR Affected: 14 CFR 135.297(a).
Description of Relief Sought/Disposition: To extend Exemption No. 3203, as amended, that provides relief from § 135.297(a) of the Federal Aviation Regulations to the extent that the petitioner may use pilots-in-command who have completed an instrument proficiency check within the preceding 12 calendar months if they have satisfactorily completed either an instrument proficiency check or training to proficiency in an approved simulator within the preceding 6 months. Grant, February 12, 1992, Exemption No. 3203F.

Docket No.: 25296.
Petitioner: Simmons Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought/Disposition: To extend Exemption No. 5161 which allows Simmons Airlines, Inc. (SIMA) to use certain foreign original equipment manufacturers (OEM), and the OEM's designated repair and overhaul facilities that do not hold appropriate U.S. foreign repair station certificates, to perform maintenance, preventive maintenance, and alteration outside the U.S. on components and parts used on SIMA's foreign manufactured aircraft. Grant, February 18, 1992, Exemption No. 5161A.

Docket No.: 25403.
Petitioner: CCAir, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought/Disposition: To extend Exemption No. 4926 which allows CCAir, Inc. to use certain foreign original equipment manufacturers (OEM), and the OEM's designated repair and overhaul facilities that do not hold appropriate U.S. foreign repair station certificates, to perform maintenance, preventive maintenance, and alterations outside the U.S. on components and parts used on CCAir's foreign manufactured aircraft. Grant, February 12, 1992, Exemption No. 4926B.

Docket No.: 25483.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR Part 43, Appendix B, (d), 45.11(a) and (d), and 91.173(d) redesignated 91.417(d).
Description of Relief Sought/Disposition: To extend Exemption No. 4902, as amended, which allows for all aircraft operating in commuter air carrier operations (as defined in part 135 and SFAR 38-4), under an FAA-approved continuous airworthiness maintenance program, to be operated without complying with the requirements pertaining to the location of aircraft identification

plates and carriage of FAA Form 337, as evidence of installation approved for fuel tank installations in the passenger or baggage compartment. Grant, February 12, 1992, Exemption No. 4902B.

Docket No.: 25743.
Petitioner: Mr. Sherwood F. Myers.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To exempt Mr. Sherwood F. Myers from the Age 60 Rule so that he may serve beyond age 60 in the capacity of a pilot during the enroute cruise portion of flight, pursuant to the duties and limitations of 14 CFR § 121.543(b) of the Federal Aviation Regulations (FAR), entitled "Flight Crewmember at Controls." Denial, February 6, 1992, Exemption No. 5402.

Docket No.: 26154.
Petitioner: City of Los Angeles Fire Department.
Sections of the FAR Affected: 14 CFR 45.29(b)(3).
Description of Relief Sought/ Disposition: To reconsider Denial of Exemption No. 5220 which was issued to City of Los Angeles Fire Department (LAFD) on July 30, 1990. In Denial of Exemption No. 5220, the FAA found that LAFD's request for an exemption from § 45.29(b)(3) of the FAR, to the extent necessary to permit operation of LAFD helicopters displaying 3-inch high marks required by the FAR, was not in the public interest. Denial, February 6, 1992, Exemption No. 5404.

Docket No.: 26394.
Petitioner: Mr. George L. Cummins, II.
Sections of the FAR Affected: 14 CFR 65.91(c)(2).
Description of Relief Sought/ Disposition: To allow Mr. George L. Cummins, II to obtain an inspection authorization (IA) without having been actively engaged, for at least the two-year period before the date the petitioner applies, in maintaining aircraft certificated and maintained under the requirements of the FAR. Petition Vacated January 3, 1992.

Docket No.: 26456.
Petitioner: Mesa Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.181(a)(2).
Description of Relief Sought/ Disposition: To allow Mesa Airlines, Inc. to establish alternate maximum en route weight requirement (drift-down) procedures for use under instrument flight rules or visual flight rules over-the-top for Beechcraft 1900C and Embraer 120 Brasilia aircraft on specified routes. Denial, January 8, 1992, Exemption No. 5409.

Docket No.: 26667.
Petitioner: FlightSafety International.
Sections of the FAR Affected: 14 CFR 121.411(a)(2), (3) and (b)(2), 121.413(b), (c) and (d), and Part 121, Appendix H.
Description of Relief Sought/ Disposition: To permit FlightSafety International (FSI), without holding an air carrier operating certificate, to train the pilots and flight engineers of Part 121 Certificate holders that contract with FSI in initial, transition, upgrade, differences, and recurrent training in approved simulators and in airplanes without FSI's instructor pilots meeting all the applicable training requirements of Subpart N and the employment requirements of Appendix H of Part 121. Partial Grant, February 19, 1992, Exemption No. 5408.

Docket No.: 26780.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.337.
Description of Relief Sought/ Disposition: To extend from February 18, 1992 until February 18, 1993 the date by which member airlines of the ATA and other similarly situated all cargo carriers must install Portable Protective Breathing Equipment (PPBE) in Class A, B, and E cargo compartments of aircraft operated by those airlines. Grant, February 18, 1992, Exemption No. 5407.

[FR Doc. 92-4737 Filed 2-28-92; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0007.
Form Number: ATF F 3310.6.
Type of Review: Extension.
Title: Interstate Firearms Shipment Report of Theft/Loss.
Description: This form is part of a voluntary program in which the Common Carrier and/or shipper report losses or thefts of firearms from interstate shipments. The form is completed by the carrier/shopper to notify ATF of the loss or theft. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center (NCIC), to initiate investigations and to perfect criminal cases.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 750.
Estimated Burden Hours Per Respondent: 20 Minutes.
Frequency of response: On occasion.
Estimated Total Reporting Burden: 250 hours.

OMB Number: 1512-0371.
Form Number: ATF REC 5400/1.
Type of Review: Extension.
Title: Inventories: Licensed Explosives Importers, Manufacturers, Dealers and Permittees.
Description: These records show the explosive material inventories of those persons engaged in the various activities within the explosives industry and are used by the government as initial figures from which an audit trail can be developed during the course of a compliance inspection or criminal investigation.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 15,754.
Estimated Burden Per Recordkeeper: 2 hours.
Frequency of response: On occasion.
Estimated Total Reporting Burden: 31,508 hours.

OMB Number: 1512-0392.
Form Number: ATF REC 5190/1.
Type of Review: Extension.
Title: Records of Things of Value to Retailers Under the Federal Alcohol Administration Act.
Description: These records (bills of sale, invoices) are used to show compliance with provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers. These records are commercial invoices showing the furniture of goods to retailers.
Respondents: Individuals or households, Businesses of other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 12,665.

Estimated Burden Hours Per Recordkeeper: 1 hour.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880 Office of Management and Budget room 3001, New Executive Office Building Washington, DC 20503

Lois K. Holland,
Department Reports Management Officer.

[FR Doc. 92–4697 Filed 2–28–92; 8:45 am]
BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

February 25, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–01458.
Form Number: IRS Form 2758.
Type of Review: Extension.
Title: Application for Extension of Time of File Certain Excise, Income, Information, and other Returns.
Description: Internal Revenue Code (IRC) 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by U.S. partnerships, fiduciaries, and certain organizations, to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.
Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 300,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	3 hours, 21 minutes.
Learning about the law or the form	6 minutes.
Copying, assembling, and sending the form to IRS	10 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 1,080,000 hours.
OMB Number: 1545–0199.
Form Number: IRS Form 5306–SEP.
Type of Review: Revision.
Title: Application for Approval of Prototype Simplified Employee Pension-SEP.
Description: This form is issued by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a Simplified Employee Pension Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 650.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	8 hours, 37 minutes.
Learning about the law or the form	1 hour, 4 minutes.
Preparing the form	2 hours, 11 minutes.
Copying, assembling, and sending the form to the IRS	16 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting/Reporting Burden: 7,878 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 92–4699 Filed 2–28–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

February 25, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Forms 9405, 9414, 9415, 9419 and 9420.
Type of Review: New collection.
Title: Tax Forms Inventory Report.
Description: These forms are designed to collect information from banks, post offices, and libraries that distribute Federal tax forms. The forms ask entities to provide information detailing the quantities and types of tax forms left at the end of the filing season. The data collected will be combined with shipment data on an account-by-account basis for the purpose of establishing form distribution guidelines for the following tax year.
Respondents: Businesses or other for-profit, Non-profit institutions.
Estimated Number of Respondents: 42,934.
Estimated Burden Hours Per Respondents:

Form No.	Response time (minutes)
9405	20
9414	20
9415	7
9419	7
9420	7

Frequency of Response: Annually.
Estimated Total Reporting Burden: 9,860 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 92–4700 Filed 2–28–92; 8:45 am]
BILLING CODE 4830–01–M

Office of the Secretary

[Department Circular—Public Debt Series—No. 9-92]

Treasury Notes of February 28, 1997, Series J-1997

Washington, February 20, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of February 28, 1997, Series J-1997 (CUSIP No. 912827 E5 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 2, 1992, and will accrue interest from that date, payable on a semiannual basis on August 31, 1992, and each subsequent 6 months on the last calendar day of February and August through the date that the principal becomes payable. They will mature February 28, 1997, and will not be subject to call for redemption prior to mataurity. In the event any payment date is a Saturaday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, February 26, 1992, prior to 12 noon, eastern standard time, for noncompetitive tenders and prior to 1 p.m., eastern standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 25, 1992, and received no later than Monday, March 2, 1992.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. A bidder, whether bidding directly or submitting bids through a depository institution or government securities broker/dealer, may not bid both competitively and noncompetively for its own account in the auction.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids for more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of $3,412,500,000, which is 35 percent of the public offering amount of $9,750,000,000. A competitive bid by a single bidder at any one yield in excess of $3, 412,500,000 will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the notes being auctioned, in "when issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. For competitive bids, an institution submitting a bid for customers must submit with the institution's tender a customer list that includes, for each customer, the name of the customer and the amount bid at each yield. Customer bids may not be aggregated by yield on the customer list. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted

in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The maximum amount which may be awarded in this auction is $3,412,500,000. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time Thursday, February 27, 1992, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time Thursday, February 27, 1992, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more as a result of bids submitted by the depository institution or the broker/dealer.

4. Reservations.

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before Monday, March 2, 1992. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the other of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 27, 1992. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previoiusly obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Bank are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A is incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Attachment A

Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—

A thrift institution, such as a savings and loan association, credit union, savings bank, or other similar entity (includes the principal or parent office

and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—

A corporation (includes the corporation and/or one or more of its majority—owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) *Partnerships*—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, and (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

[FR Doc. 92–4817 Filed 2–26–92; 4:34 pm]
BILLING CODE 4810–40–M

[Department Circular—Public Debt Series—No. 8–92]

Treasury Notes of February 28, 1994, Series W–1994

Washington, February 20, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $14,250,000,000 of United States securities, designated Treasury Notes of February 28, 1994, Series W–1994 (CUSIP No. 912827 E4 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 2, 1992, and will accrue interest from that date, payable on a semiannual basis on August 31, 1992, and each subsequent 6 months on February 28 and August 31 through the date that the principal becomes payable. They will mature February 28, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedure

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Tuesday, February 25, 1992, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., eastern standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 24, 1992, and received no later than Monday, March 2, 1992.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. A bidder, whether bidding directly or submitting bids through a depository institution or government securities broker/dealer, may not bid both competitively and noncompetitively for its own account in the auction.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids for more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of $4,987,500,000, which is 35 percent of the public offering amount of $14,250,000,000. A competitive bid by a single bidder at any one yield in excess of $4,987,500,000 will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive

bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the notes being auctioned, in "when issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealer that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. For competitive bids, an institution submitting a bid for customers must submit with the institution's tender a customer list that includes, for each customer, the name of the customer and the amount bid at each yield. Customer bids may not be aggregated by yield on the customer list. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The maximum amount which may be awarded in this auction is $4,987,500,000. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time Wednesday, February 26, 1992, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time Wednesday, February 26, 1992, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more as a result of bids submitted by the depository institution or the broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before Monday, March 2, 1992. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury;

in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 27, 1992. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payments for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A is incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines For Noncompetitive Bidding In All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings bank, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships—*

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries—*

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts—*

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, and (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions—*

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds—*

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds—*

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers—*

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds—*

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219-3350).

[FR Doc. 92-4818 Filed 2-26-92; 4:34 pm]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Boards; Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the meetings of the following Federal Advisory Committees.

Merit review board for—	Date	Time	Location
Oncology	March 19, 1992	8 a.m. to 5 p.m.	Holiday Inn Crown Plaza [1]
Do	March 20, 1992	do	
Neurobiology	March 23, 1992	do	Holiday Inn Crown Plaza
Do	March 24, 1992	do	
Do	March 25, 1992	do	
Nephrology	March 24, 1992	do	Holiday Inn Crown Plaza
Cardiovascular Studies	March 26, 1992	do	Holiday Inn Crown Plaza
Do	March 27, 1992	do	
Surgery	March 29, 1992	do	Holiday Inn Crown Plaza
Immunology	March 30, 1992	do	Holiday Inn Crown Plaza

Merit review board for—	Date	Time	Location
Do	March 31, 1992	do	
Hematology	April 6, 1992	do	Holiday Inn Crown Plaza
Endocrinology	April 9, 1992	do	Holiday Inn Crown Plaza
Do	April 10, 1991	do	
Alcoholism and Drug Dependence	April 10, 1992	do	Holiday Inn Crown Plaza
Respiration	April 13, 1992	do	Holiday Inn Crown Plaza
Mental Health and Behavioral Studies	April 16, 1992	do	Holiday Inn Crown Plaza
Infectious Diseases	April 17, 1992	do	Holiday Inn Crown Plaza [1]
Do	April 21, 1992	do	
Gastroenterology	April 22, 1992	do	Holiday Inn Crown Plaza [1]
Do	April 23, 1992	do	
Basic Sciences	April 24, 1992	do	Holiday Inn Crown Plaza [1]
Do	April 24, 1992	do	
	April 25, 1992	do	

[1] Holiday Inn Crown Plaza, 775 12th Street NW., Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 523–5942 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: February 18, 1992.

By Direction of the Secretary

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–4710 Filed 2–28–92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 41
Monday, March 2, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 3, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Voluntary Standards/International Affairs Activities.

The staff will brief the Commission on voluntary standards and international affairs activities carried out by staff during the first quarter of fiscal year 1992.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: February 26, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–4907 Filed 2–27–92; 2:05 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 25, 1992, 57 FR 6548.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 26, 1992, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added to Item CAG–3 on the Agenda schedule for February 26, 1992:

Item No., Docket No., and Company

CAG–3—RP91–80–000, *et al.*, Algonquin Gas Transmission Company

Lois D. Cashell,

Secretary.

[FR Doc. 92–4824 Filed 2–27–92; 9:20 am]

BILLING CODE 6717–02–M

FEDERAL TRADE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R., Friday, January 31, 1992, Page No. 3826.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., Wednesday, March 4, 1992.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the date of its previously scheduled Oral Argument in Schering Corp., Docket No. 9232, from Wednesday, March 4, 1992, at 2:00 p.m., to Thursday, April 16, 1992, at 2:00 p.m.

Donald S. Clark,

Secretary.

[FR Doc. 92–4829 Filed 2–27–92; 9:21 am]

BILLING CODE 6750–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on March 9, 1992. The meeting will commence at 10:00 a.m.

PLACE: The Washington Marriott Hotel, 1221 22nd Street NW., The DuPont Ballroom, Washington, DC 20037, (202) 872–1500.

STATUS OF MEETINGS: *Open*, except that a portion of the meeting may be closed if a majority of the Board of Directors votes to hold an executive session. At the closed session, pursuant to receipt of the aforementioned vote, the Board of Directors will consider and vote on approval of the draft minutes of executive sessions of prior meetings of the Board. In addition, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is or may become a party. The Board of Directors will also receive and consider a report on current investigations from the Inspector General. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(7) and (10)], the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(f) and (h)].[3] The closing has been certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification is posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue SW., Washington, DC 20024, in its three reception areas, and is otherwise available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of February 17, 1992 Meeting.
3. Chairman's and Members' Reports.
4. President's Report.
5. Inspector General's Report.

CLOSED SESSION: [4]

6. Approval of Minutes of Executive Sessions Held on November 18, 1991, December 10, 1991, January 13, 1992 and February 17, 1992.
7. Consideration of Report by Inspector General on Current Investigations and Other Matters.
8. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party.

OPEN SESSION:

—(Resumed)

9. Consideration of Build-Out Costs of Furniture and Equipment Related to Pending Relocation of Corporation Headquarters Offices.
10. Consideration of Operations and Regulations Committee Report.
11. Consideration of Audit and Appropriations Committee Reports.
    a. Consideration of Management Request to Modify Management and Administration Budget Within and Between Line Items.
12. Consideration of Office of the Inspector General Oversight Committee Report.
13. Consideration of Provision for the Delivery of Legal Services Committee Report.
14. Consideration of Special Reauthorization Committee Report.
15. Consideration of Board Meeting Schedule for the Balance of 1992.
16. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Dated Issued: February 27, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–4905 Filed 2–27–92; 8:45 am]

BILLING CODE 7050–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

[3] As to the Board's consideration and approval of the draft minutes of executive sessions held on November 18, 1991, December 10, 1991, January 13, 1992 and February 17, 1992, the closing is authorized as noted in the **Federal Register** notice corresponding to each of these Board meetings.

[4] It is anticipated that the executive session will conclude at approximately 1:00 p.m. The open session will reconvene immediately thereafter.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 3, 1992.

A closed meeting will be held on Tuesday, March 3, 1992, at 2:30 p.m. An open meeting will be held on Thursday, March 5, 1992, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 20.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 3, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Formal order of investigation.

The subject matter of the open meeting scheduled for Thursday, March 5, 1992, at 10:00 a.m., will be:

Consideration of a proposed rule change by the American Stock Exchange, Inc. ("AMEX") to create a new marketplace—the Emerging Company Marketplace or ECM—designed to list less financially mature companies which are too small to meet the Amex's regular listing criteria. The ECM would consist of a new "junior" tier of listed securities that would not meet the Amex's current listing standards, but would otherwise be subject to many of its regulatory requirements (*e.g.*, last sale reporting, trading and specialist allocation rules, and surveillance procedures). For further information, please contact Liz Pucciarelli Hensley at (202) 272–2406.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272–2000.

Dated: February 27, 1992.

Jonathan G. Katz,
Secretary.

[FR Doc. 92–4878 Filed 2–27–92; 11:56 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 6647 February 26, 1992].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 20, 1992.

CHANGE IN THE MEETING: Cancellation.

A closed meeting scheduled for Thursday, February 27, 1992, at 10:00 a.m., has been canceled.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272–2400.

Dated: February 26, 1992.

Jonathan G. Katz,
Secretary,

[FR Doc. 92–4879 Filed 2–27–92; 11:56 am]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 41
Monday, March 2, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Exemption for Commodity Pool Operators and Commodity Trading Advisors for Offerings to Qualified Eligible Participants

Correction

In proposed rule document 92-1911, beginning on page 3148, in the issue of Tuesday, January 28, 1992, make the following corrections:

1. On page 3149, in the 1st column, in the 20th line, insert "as" after "well".

2. On page 3150, in the first column, in the third paragraph, in the sixth line, "Part 5" should read "Part 4".

3. On page 3154, in the first column, in the first paragraph, in the seventh line from the bottom, "Rule 4.22(c)" should read "Rule 4.22".

4. On page 3155, in the 3d column, under *B. Paperwork Reduction Act*, in the 17th line, "House" shoule read "Hours".

§ 4.7 [Corrected]

5. On page 3156, in the first column, in § 4.7(a)(2), in the fourth line, "or" should read "of"; and in the last line, replace the semicolon with a colon.

6. On the same page, in the second column, in § 4.7(a)(2)(xi), in the fourth line, "nor" should read "not".

7. On page 3157, in the 3d column, in § 4.7(c), in the 9th line, after "(ii)", insert "hereunder will be exempt as provided in paragraph (c)(1)(i) or (ii)", and, in the 11th line, "for" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 106

[Docket No. 87N-0402]

Infant Formula Record and Record Retention Requirements

Correction

In rule document 91-30716, beginning on page 66566, in the issue of Tuesday, December 24, 1991, make the following correction:

§ 106.100 [Corrected]

On page 66572, in the third column, in § 106.100(k)(6), in the fourth line, "manufactured" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0071]

Quad Pharmaceuticals, Inc.; Withdrawal of Approval of 97 Abbreviated New Drug Applications

Correction

In notice document 92-4011 beginning on page 6228 in the issue of Friday, February 21, 1992, make the following corrections:

1. On page 6228, in the second column of the table, in the fourth line, "Lincomycin" was misspelled.

2. On the same page, in the same column of the table, in the 32d and 33d lines, "mg/mL." should read "mg/vial.".

3. On page 6229, in the first full paragraph, in the last line, "1922" should read "1992".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91E-0492]

Determination of Regulatory Review Period for Purposes of Patent Extension; Accupril®; Correction

Correction

In notice document 92-4080 appearing on page 6229 in the issue of Friday, February 21, 1992, in the first column, under **SUMMARY**, in the seventh line, "Accupril®" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-343-7122-10-D063; CACA 28709]

Amendment to Withdrawal Application and Opportunity for Public Meeting; CA

Correction

In notice document 92-3300, beginning on page 5167, in the issue of Wednesday, February 12, 1992, make the following corrections:

1. On page 5167, in the second column, under **DATES:**, in the third line, "1991." should read "1992."

2. On page 5168, in the 1st column, in the 26th line, "Secs. 34 to 35," should read "Secs. 34 and 35,".

BILLING CODE 1505-01-D

federal register

Monday
March 2, 1992

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1992; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3368; FR-3157-N-01]

Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1992

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1992.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant (CDBG) Program for Fiscal Year 1992. The NOFA contains information concerning the deadline for filing grant applications; eligibility of applicants; available amounts; selection criteria; and the application process, including how to apply for funding, and how selections will be made.

DATES: Application is due by Friday, May 8, 1992. Application kits may be obtained from, and must be submitted to either HUD's New York Regional Office or Buffalo Field Office. Applications may be mailed, provided that they are postmarked no later than midnight, May 8, 1992. If an application is physically delivered to either the New York Regional Office or the Buffalo Field Office, the application must be delivered by the close of business for that office. Applicants should contact the New York Regional Office or the Buffalo Field Office regarding the time that the office closes. Application kits will be made available by a date that affords applicants at least 30 days to respond to this NOFA. Please see section II of this NOFA for further information on obtaining and submitting applications.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on, or postmarked by May 8, 1992. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-1322. The TDD number is (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) and assigned approval number 2506-0020.

Outline

Item

I. Purpose and Substantive Description

A. Authority and Background

1. Authority

Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); 24 CFR part 570, subpart F.

2. Background

Title I of the Housing and Community Development Act of 1974, as amended (the HCD Act), authorizes the

Community Development Block Grant (CDBG) Program. Section 106 of Title I permits the States to elect to assume the administrative responsibility for the CDBG Program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within a State which does not elect to assume the administrative responsibility for the program. This NOFA supplements subpart F of 24 CFR part 570, which sets out the requirements applicable to the CDBG Program in nonentitled areas.

In accordance with 24 CFR 570.420(e) and (h)(3), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (Reform Act), HUD is issuing this NOFA for New York State's Small Cities Program for Fiscal Year (FY) 1992 to announce the allocation of funds for Single Purpose and Comprehensive grants, and to establish the deadline for filing grant applications. The NOFA also explains in detail how HUD will apply the regulatory threshold requirements for funding eligibility; and the selection criteria for rating and scoring applications for Comprehensive grants and for scoring projects in applications for Single Purpose grants. The NOFA includes a description of statutory amendments which apply to the program even though conforming regulations have not yet been adopted. Other informational aspects of the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Regional Office and Buffalo Field Office.

3. Statutory Changes

The National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990) amended title I of the Housing and Community Development Act of 1974 (HCD Act). The amendments made by NAHA are applicable, as described below, to the funds made available under this NOFA.

a. Principal Benefit Certification. NAHA amended section 104(b)(3) of the HCD Act to increase the principal benefit certification from 60 to 70 percent. Applicants must certify that 70 percent of the funds of the CDBG grant shall be for activities which principally benefit low- and moderate-income persons. The principal benefit statement in the certification accompanying the application reflects the 70 percent requirement.

b. Eligible Activities—(1) *Economic Development—section 105(a)(17).* NAHA amended section 105(a)(17) of the HCD Act with respect to the provision of assistance to for-profit entities. Recipients now may provide assistance to private for-profit entities when such assistance is appropriate to carry out economic development projects that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods. The economic development assistance must be for activities that:

(a) Create or retain jobs for low- and moderate-income persons;

(b) Prevent or eliminate slums and blight;

(c) Meet urgent needs;

(d) Create or retain businesses owned by community residents;

(e) Assist businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents, or provide technical assistance to promote any of the activities in (a) through (e) above.

Activities which meet the national objective requirements under 24 CFR 570.208(a)(4), (b) or (c), also would meet the new statutory provisions of the first three categories above. For activities to be qualified under 24 CFR 570.208(a)(2) as benefiting an area containing sufficient percentage of low- and moderate-income residents (pending promulgation of revised rules) applicants also would have to determine that the assisted activity either qualifies as creating or retaining businesses owned by community residents or that the business assisted, provided goods or services that are needed by, and affordable to, low- and moderate-income residents of the area to be served. The amendment to section 105(a)(17) has eliminated the term "necessary" from the "necessary or appropriate" determination required prior to the provision of CDBG assistance to a for-profit entity. At this point, HUD does not believe that the deletion of the term "necessary" materially alters the type of determination required to be made. Accordingly, the analysis described at 24 CFR 570.203(b), and in the supplemental guidance provided by memorandum, would continue to be applicable.

A second change in section 105(a)(17) requires that in the event CDBG assistance to a for-profit entity involves displacement of existing businesses and jobs in neighborhoods, then, to the extent practicable, such displacement shall be minimized. Pending implementation regulations, grantees must determine whether assistance to a for-profit entity will result in the displacement of existing businesses and jobs in neighborhoods, and if so, grantees must document what steps were taken to minimize such displacement.

(2) *Homeownership Assistance—section 105(a)(20).* NAHA added to Title I a new activity (direct assistance to persons of low- and moderate-income to facilitate and expand homeownership) under section 105(a)(20). Assistance provided under this provision shall not be considered as a public service activity for purposes of the 15 percent cap on the use of CDBG funds for public services.

Under this provision, CDBG funds may be used to: subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers; finance the acquisition of housing that is occupied by low- and moderate-income homebuyers; acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that assistance under Title I of the HCD Act may not be used by recipients or subrecipients to directly guarantee such mortgage financing); provide up to 50 percent of the downpayment required from low- and moderate-income buyers; and pay any reasonable closing costs associated with the purchase of a home incurred by a low- and moderate-income homebuyer.

(3) *Public Service Cap.* NAHA amended section 105(a)(8) of the HCD Act by placing the 15 percent cap for public services on each State's total nonentitlement CDBG allocation plus 15 percent of program income anticipated to be received in the fiscal year. Previously, the 15 percent cap for public services was applied to each recipient's grant.

As a result of this provision, HUD may award a grant to a recipient for public service activities with 100 percent of the funds spent for public service activities. However, any application requesting funds for public service activities must be ratable under one of the existing Single Purpose or the Comprehensive grant categories. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications until the cap is reached.

c. Prohibition of Discrimination on Basis of Religion. NAHA amended section 109(a) of the HCD Act to prohibit discrimination on the basis of religion or religious affiliation. No person shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with

CDBG funds on the basis of his or her religion or religious affiliation.

d. Certification on Protecting Individuals Engaged in Nonviolent Civil rights Demonstration. NAHA added section 104(l) to the HCD Act, which provides that no CDBG funds may be obligated or expended to any unit of general local government that: fails to adopt and enforce a policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; or fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location, which is the subject of such non-violent civil rights demonstration within its jurisdiction. The new certification has been revised consistent with section 104(l).

e. Exemption from Davis-Bacon Requirements For Volunteers. NAHA amended section 110 of the HCD Act to exempt volunteers from Davis-Bacon requirements. This amendment applies to any person serving as a volunteer that does not receive compensation for such services, or is paid expenses, reasonable benefits, or a nominal fee for such services, and is not otherwise employed at any time in the construction work for the project. This amendment applies to any volunteer services provided before, on, or after the date of enactment, except that it may not be construed to require the repayment of any wages paid before the date of enactment for services provided before that date. HUD will provide further instructions on this provision at a later date.

f. Comprehensive Housing Affordability Strategies (CHAS). Section 105 of NAHA established the requirement that HUD will provide assistance directly to a jurisdiction only if—

—The jurisdiction submits to HUD a comprehensive housing affordability strategy (CHAS);
—The jurisdiction submits annual updates of the CHAS; and
—The CHAS, and any annual update of the CHAS, is approved by HUD.

This is not an amendment to Title I of the HCD Act but is applicable to all jurisdictions which are direct recipients of affected HUD assistance. In the context of the HUD-Administered Small Cities Program, any jurisdiction which plans to undertake a housing activity in Fiscal Year 1992 as part of either a Single Purpose or a Comprehensive grant must prepare and submit a CHAS in order to be eligible to apply for such assistance and must have an approved CHAS to order to receive such assistance. Further, any Small Cities application seeking assistance for housing activities must contain a certification that it is consistent with the applicant jurisdiction's CHAS, which may have been previously submitted or which is submitted concurrent with the application.

On February 4, 1991, HUD published in the **Federal Register** am interim, rule implementing the CHAS requirement of section 105. The interim rule, codified at 24 CFR part 91, permits units of general local government participating in the HUD-Administered Small Cities Program to prepare an abbreviated CHAS to fulfill the requirement. On December 16, 1991 (56 FR 65271), HUD published in the **Federal Register** a notice concerning the preparation of an abbreviated CHAS. An abbreviated CHAS need only address the specific needs of the segment of the population/market which is eligible to be served by the assistance sought. A copy of this notice (issued as notice CPD 91–36, dated December 18, 1991) will be included as part of the application kit to guide applicants in the preparation of an abbreviated CHAS. Applicants should refer, as necessary, to the interim rule and other HUD issuances for further guidance on the preparation of an abbreviated CHAS.

Jurisdictions planning to apply for housing assistance through the HUD-Administered Small Cities Program are advised to begin preparation of an abbreviated CHAS at the earliest possible time in order to have sufficient time to fulfill the citizen participation requirements associated with the CHAS. If possible, jurisdictions should endeavor to submit their abbreviated CHAS in advance of the Small Cities application due date. The latest time at which an abbreviated CHAS will be accepted by HUD for the HUD-Administered Small Cities Program in New York will be the application due date for the Small Cities application (i.e. the CHAS must accompany the application). Questions regarding the CHAS should be directed to the appropriate HUD field office.

An application for Small Cities CDBG funds with respect to which HUD approval of a submitted CHAS is pending will either be put on hold until the strategy is approved or will be disapproved.

4. HUD Reform Act Requirements: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

On March 14, 1991 (56 FR 11032), HUD published a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. (See also Section II.D. of this NOFA.) On January 16, 1992, HUD published at (57 FR 1942) additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and applicant and recipient disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. HUD Responsibiliities.—

(1) Documentation and Public Access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements).

(2) Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be make available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

b. Units of General Local Government Responsibilities. Units of general local

government awarded assistance under this NOFA are subject to the provisions of either paragraph b(1), or paragraphs (b)(2) and (b)(3). For units of local government awarded assistance under this NOFA which in turn make the assistance available on a Non-Competitive Basis for a specific project or activity to a subrecipient, paragraph b(1) applies. For units of local government awarded assistance under this NOFA, which in turn make the assistance available on a Competitive Basis for a specific project or activity to a subrecipient, paragraphs b(2) and (3) apply.

(1) Disclosures. The units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

(2) Documentation and Public Access. The recipient unit of general local government must ensure that documentation and other information regarding each application submitted to the recipient by a subrecipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material, including any letters of support, available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Unit of general local government recipients must also notify the public of the subrecipients of the assistance. Each recipient will develop documentation, public access, and notification procedures for its programs. (See 24 CFR 12.14(b) and 12.16(c), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information for more information on these documentation and public access requirements.)

(3) Disclosures. Units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for five years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

B. Allocation Amounts

1. Total Available Funding and Allocation

The nonentitlement CDBG funds for New York State for FY 1992 total $41,199,000 and will be allocated as follows:

a. Buffalo Field Office. $35,911,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's Buffalo Field Office. Maximum grant amounts for units of general local governments under the jurisdiction of the Buffalo Field Office will be $400,000 for Single Purpose grant applications and $600,000 for Comprehensive grant applications, except that counties may apply for up to $600,000 in Single Purpose funds. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be $600,000.

b. New York Regional Office. $5,288,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Regional Office. Maximum grant amounts for communities under the jurisdiction of the New York Regional Office will be $400,000 for Single Purpose grants and $600,000 for Comprehensive grants, except that counties may apply for up to $600,000 in a Single Purpose funds. The maximum amount for Single Purpose grant applications made jointly by units of general local government will be $600,000.

2. Distribution of Funds Between Single Purpose and Comprehensive Grants

Generally, 85 percent of the funds allocated separately to the New York and Buffalo offices shall be for Single Purpose grants with the remaining 15 percent to be reserved for Comprehensive grants. However, in order to assure a competitive distribution of funds, each HUD office has the option to revise the division of funds between Single Purpose and Comprehensive grants to as low as 75 percent for Single Purpose and up to 25 percent for Comprehensive grants.

C. Eligibility

1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding: metropolitan cities, urban counties; units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city; and Indian tribes eligible for assistance under section 106 of the HCD Act. Applications may be submitted individually or jointly.

2. Previous grantees

Eligible applicants, which previously have been awarded Small Cities Program CDBG grants, are also subject to an evaluation of capacity and performance. Numerical thresholds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.) Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

3. Eligible Activities and National Objectives

Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. Each activity must meet one of the national objectives (i.e. benefit to low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community), and each grant must meet the requirements for compliance with the primary objective of principally benefitting low- and moderate-income persons, as required under the provisions of § 570.200(a) (2) and (3) and § 570.208, which supersede § 570.420(h)(2). As described in Section I.A.3.a. of this NOFA, the principal benefit requirement was increased by NAHA from 60 to 70 percent. The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.200(a)(3) (i) through (v).

4. Environmental Review Requirement

The HUD environmental review procedures contained in 24 CFR part 58 apply to this program. Under part 58, grantees assume all of the responsibilities for environmental review, decisionmaking and action pursuant to the National Environmental Policy Act of 1969 and the other provisions of law specified by the

Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

D. Types of Grants

1. Comprehensive Grants

a. General. Comprehensive grants are available to fund projects which meet the following criteria:

(1) Address a substantial portion of the identified community development needs within a defined area or areas;

(2) Involve two or more activities related to each other that will be carried out in a coordinated manner;

(3) Have a beneficial impact within a reasonable period of time.

HUD may make an exception to the requirement that all activities must be carried out in a defined area or areas if the applicant can demonstrate that the comprehensive strategy is a reasonable means of addressing identified needs.

If an application for a Comprehensive grant does not meet the requirements of the Comprehensive Grant Program, HUD will rate the proposal as a Single Purpose grant.

b. Funding Requirements. The total amount of funds requested for a Comprehensive grant must be within the established ceilings. Grant ceilings for each of the administering offices are indicated in Section I.B.1 of this NOFA. Grant funds requested must be sufficient, either by themselves or in combination with funds from other sources, to complete the project within a reasonable amount of time. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

2. Single Purpose Grants

a. General. Single Purpose grants are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set of activities. Each project must address community development needs in one of the following problem areas:

—Housing
—Public Facilities
—Economic Development.

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application, will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Description, Community Development Activities, Impact Description and Program Schedule forms have been filled out, indicating project names). In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were rated as a whole, as has been the case with some economic development and housing projects. If, however, the projects tend to meet impact criteria to the same extent, or the weaker element is only a small portion of the overall project, there is no discernable benefit in designating separate projects.

b. Funding Requirements. The total amount of funds requested for a Single Purpose grant must be within the established ceilings. Grant ceilings are discussed in Section I.B.1. of this NOFA. Grand funds requested must be sufficient, either by themselves or in conjunction with funds from other sources, to complete the project within a reasonable period of time. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated.

c. Projects with Multiple Activities. If a project consists of more than one activity, the activity that directly addresses the need must represent at least a majority of the funds requested. Other activities must be incidental to, and in support of the principal activity.

d. Applications with Multiple Projects. If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the appropriate grant ceilings identified in Section I.B.1. of this NOFA.

3. Final Selection

The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the problem areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. Applicants will receive a single grant in the amount of the project or projects applied for which were ranked high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

—The project receiving the highest program impact rating will be funded;
—If tied projects have the same program impact rating, the project having the highest combined score on the needs factors will be funded; and
—If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded.

As soon as possible after the rating and ranking process has been completed, HUD will notify all applicants regarding their rating scores and funding status. Thereafter, applicants may contact HUD to discuss scores or any aspects of the selection process.

E. Selection Criteria/Ranking Factors.

1. General

Complete applications received from eligible applicants by the application due date are rated and scored by HUD. Regardless of the type of grant sought (Single Purpose or Comprehensive), applications are rated and scored against four factors. These four factors are discussed in more detail in subsection 3 of this Section E. Previous grantees of Small Cities Program CDBG grants, also undergo a performance evaluation. The criteria for determining adequacy of performance is discussed in subsection 2 of this Section E.

2. Performance Evaluation

As noted in Section C of this NOFA, previous grantees of Small Cities Program CDBG grants are subject to an evaluation of performance and capacity to undertake the proposed program.

For purposes of making performance evaluations, HUD will use any information available as of the application due date. Performance also will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual in-house reviews. Grantees may be requested to submit additional information, if generally available facts raise a question as to capacity to undertake the proposed program. No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by evaluation of the following areas:

a. Community Development Activities. The following thresholds for performance in expending CDBG funds have been established for FY 1992 and pertain to all Single Purpose and Comprehensive Grants:

FY 1986 and earlier—Grants must be closed out
FY 1987—Grant funds 100% expended

FY 1988—Grant funds 95% expended
FY 1989—Grant funds 60% expended
FY 1990—Grant funds 30% expended
FY 1991—Recipients must be on target with respect to the latest Small Cities Program Schedule received by HUD.

Note: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant which fails to meet the percentages specified above, may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after the application due date be accepted.

b. Compliance with Applicable Laws and Regulations. An applicant will be considered to have performed inadequately if the applicant:

(1) Has not substantially complied or attempted to comply with the laws, regulations, and Executive Orders applicable to the CDBG Program, or has a civil rights suit brought by the Justice Department pending against it, or has not resolved a charge of discrimination against it issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;

(2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or

(3) Has not resolved or attempted to resolve audit findings.

An applicant will be ineligible for a grant where the inadequate performance in compliance with applicable laws and regulations evidences a lack of capacity to carry out the proposed project or program. An application also will not be accepted from a unit of general local government which has an outstanding audit finding or monetary obligation for any HUD program. Additionally, applications will not be accepted from any entity which proposes an activity in a unit of general local government that has an outstanding audit finding or monetary obligation for any HUD program. The HUD Regional Administrator may provide waivers to this prohibition, but in no instance will a waiver be provided where funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

3. Four Factor Rating

As noted in subsections 1 and 3 of this Section E, all applications are rated and scored against four factors. These four factors are:

Need based on absolute number of persons in poverty;
Need based on the percent of persons in poverty;
Program Impact; and
Outstanding performance in fair housing and equal opportunity.

A maximum of 615 points is possible under this system with the maximum points for each factor being:

	Points
Need—absolute number of persons in poverty	75
Need—percent of persons in poverty	75
Program Impact	400
Outstanding performance—FHEO:	
Provision of assisted housing	20
Fair Housing Programs	20
Minority contracting	15
Equal opportunity employment	10
Total	615

Each of the four factors is outlined below. All points for each factor are rounded to the nearest whole number. Applicants should note that there is a distinct difference in the methods used to evaluate Program Impact for Single Purpose grants versus Program Impact for Comprehensive grants. These differences are more fully discussed below.

a. Need—Absolute number of persons in poverty. HUD uses census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Comprehensive and Single Purpose grant applicants are grouped and rated separately for this factor. Applicants which are county governments are rated separately from all other applicants. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

b. Need—Percent of persons in poverty. HUD uses decennial census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Comprehensive and Single Purpose grant applicants are grouped and rated separately for this factor. Applicants in each group are compared in terms of the percentage of their population below the poverty level. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

c. Program Impact—General. In evaluating program impact, HUD will consider:

—Extent and seriousness of the identified needs;
—Results to be achieved;
—Number of beneficiaries, given the type of program;
—Nature of the benefit;
—Additional actions that may be necessary to fully resolve the need;
—Previous coordinated actions taken by the applicant to address the need;
—Environmental considerations;
—Whether displacement will be involved and what steps will be taken to minimize displacement and to mitigate its adverse effects or related hardships; and
—Where appropriate, housing site selection standards.

Assessments are done on a comparative basis and, as a result, it is important that each applicant present information in a detailed and uniform manner.

In addressing Program Impact criteria, applicants should adhere to the following general guidelines for quantification. Where appropriate, absolute and percentage figures should be used to describe the extent of community development needs and the impact of the proposed program. This includes, but is not limited to, appropriate units of measure (e.g. numbers of housing units or structures, linear feet of pipe, pounds per square inch, etc.), and costs per unit of measure. These quantification guidelines apply to the description of need, the nature of proposed activities and the extent to which the proposed program will address the identified need.

Appropriate documentation should be provided to support the degree of need described in the application. Basically, the sources for all statements and conclusions relating to community needs should be included in the application or incorporated by reference. Examples of appropriate documentation include planning studies, letters from public agencies, newspaper articles, photographs and survey data.

Generally, the most effective documentation is that which specifically addresses the subject matter and has a high degree of credibility. Applicants which intend to conduct surveys to obtain data are advised to contact the appropriate HUD office prior to conducting the survey for a determination as to whether the survey methodology is statistically acceptable.

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other

funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

Past productivity and administrative performance of prior grantees will be taken into consideration when reviewing the overall feasibility of the program. Overall program design, administration and guidelines are other feasibility issues that should be articulated and presented in the application, since they are critical in assessing the effectiveness and impact of the proposed program.

(1) *Program Impact—Single Purpose Grants.* Each project will be rated against other projects addressing the same problem area, so that, for example, housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e. separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were all related as a whole, as has been the case with some economic development projects. If, however, the projects tend to meet the impact criteria to the same extent, or the weaker element is only a small portion of the overall program, there is no discernable benefit in designating separate projects.

Applicants should bear in mind that the impact of the proposed project will be judged by persons who may not be familiar with the particular community. Accordingly, individual projects will be rated according to how well the application demonstrates in specific, measurable terms, the extent to which the impact criteria are met. General statements of need and impact alone will not be sufficient to obtain a favorable rating.

(a) *Program Impact—Single Purpose—Housing.* There are two distinct types of Single Purpose Housing projects: Housing Rehabilitation and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(i) *Housing Rehabilitation.*

Needs. Each application should provide information on the total number of units in the project area, the number that is substandard, and the number of substandard units occupied by low and moderate income households. The purpose of this information is to establish the relative severity of housing conditions within the designated project area compared to other housing rehabilitation applications. The application also should describe the date and methodology of any surveys used to obtain the information, including an explicit and detailed definition of "substandard".

Surveys of Housing Conditions. Surveys of housing conditions serve several purposes in evaluating applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

Project Design and Feasibility. The application should describe the project in sufficient detail to allow the reviewer to assess its feasibility and its probable impact on the conditions described. It also should describe project requirements in such a way that regulatory and policy concerns will be addressed.

In reviewing applications from grantees with prior housing rehabilitation projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications.

It should be noted that HUD encourages communities to design projects supplementing CDBG rehabilitation funds with private funds wherever feasible and appropriate, especially in the case of rental units and housing not occupied by lower income persons. In such cases, the CDBG subsidy should be as low as possible, while retaining sufficient incentive to attract local participants. On the other hand, projects designed for low income homeowners should not require private contributions at a level that puts the project out of reach of potential participants.

Where the creation of new units is proposed, either through new construction or conversion, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information. The proposed project clearly must support, or result in, additional units for low and moderate income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structure for residential use, or new construction projects for which the proposed project will provide non-construction assistance.

Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact. Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

The impact of the proposed project will be based on the degree of need, the number of units to be created, overall feasibility and the nature and cost of the proposed activities.

For projects consisting of more than one activity, the activity that directly addresses the need must represent at least the majority of funds requested. Other activities must be incidental to and in support of the principal activity. For example, public improvements included in a rehabilitation project that addresses housing need must: Be a relatively small amount in terms of funds requested; clearly be in support of the housing objective; and demonstrate a positive and direct link to the national objective.

For incidental activities claiming benefit to low and moderate income persons, the application must document that at least 51 percent of the residents of the service area meet the low/moderate income requirement. Funds should not be requested for activities that are not incidental to, and in support of the principal activity.

Scoring. Individual projects often vary in the extent to which they meet the criteria outlined above. Accordingly, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all projects receiving a particular rating will match all the criteria point-by-point, in the same manner. The objective for non-target area projects, in as much as they are sparsely populated, only should be to assist low and moderate income persons. Accordingly, the following standard will be used for rating housing rehabilitation projects:

Maximum (400 Points)

1. Severe need is shown in the project area, in terms of the proportion of units that are substandard and the extent of disrepair in the units.
2. Project would bring all, or almost all, of the units in the project area up to standard.
3. There are no feasibility questions, such as availability of other resources, marketability, or appropriateness of project design, which would hinder the timely completion of the project as proposed.
4. Benefits a large number of persons when compared to other housing projects.

Substantial (300 Points)

1. Serious need is shown.
2. Project would bring most of the units in the area up to standard.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.

Moderate (200 Points)

1. Serious need is shown, but is not as well documented as in other applications.
2. Project would bring units up to standard, but not to the same extent as other applications.
3. There may be some minor feasibility questions.
4. Benefits a significant number of persons.

Minimal (100 Points)

1. Some need is evident, but it is not serious compared to other applications, or is not well documented.
2. Project may bring most units up to standard, but not to same extent as in other applications.
3. There are serious feasibility questions.
4. Benefits a small number of persons.

Insignificant (0 Points)

1. Very little need has been demonstrated.
2. Project would not rehabilitate most units.
3. There are serious feasibility questions.
4. Benefits a very small number of persons.

(ii) *Direct Homeownership Assistance.* Homeownership activities are defined as activities which would promote homeownership within the applicant jurisdiction, focusing particularly on aiding low and moderate income persons in becoming homeowners. This is the second year in which direct homeownership activities are eligible activities under the Small Cities Program. While declining to identify any particular type of proposed project as superior, HUD is identifying several criteria which must be addressed within the project design, in order for the application to receive the maximum project impact.

Applications must include a well developed description of homeownership needs in the applicant jurisdiction, focusing particularly on the needs of low and moderate income persons. The description also should include, if applicable, any alternative approaches which have been considered in meeting homeownership needs. Project feasibility must be addressed as part of the application.

The application must demonstrate that the proposed project would make effective use of all available funds. This would include any local, State or other Federal funds which would be utilized by the proposed project. If other such funds are included as part of the proposed project, the applicant must demonstrate that such funds are committed and truly available for the project.

Any efforts which would affirmatively further fair housing, by promoting homeownership among minorities as well as homeownership throughout the community, must be outlined in the application.

The application must explain how the project would benefit low and moderate income homebuyers, particularly focusing on first-time and minority homebuyers. The application also should address any homeownership counselling services which would be provided to persons selected to participate in the proposed project.

Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to compliment available public sector funds, including CDBG money.

HUD will review each application which meets the threshold against the following criteria:

Maximum (400 Points)

1. Project design is appropriate to demonstrated homeownership need and alternative approaches to meeting the need are shown to have been considered. Additionally, there are no feasibility questions regarding the implementation and execution of the proposed project according to the schedule.
2. The application documents serious homeownership needs in the community and the proposed project would make effective use of available funds.
3. The proposed project would affirmatively further fair housing by including initiatives to reach out to potential minority homeowners and by promoting homeownership opportunities throughout the community.
4. The proposed project would target first-time homebuyers.
5. The proposed project would provide homeownership counseling to project participants.
6. The proposed project would compliment other Federal, State or local programs which promote homeownership.
7. The proposed project would utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions.

Substantial (300 Points)

1. Project design demonstrates a workable approach to homeownership assistance needs, and there are no major feasibility questions regarding implementation of the proposed project.
2. Substantial homeownership needs are documented by the application, and the proposed project would make effective use of available funds.
3. The proposed project would affirmatively further fair housing by promoting homeownership opportunities throughout the community.
4. The proposed project would encourage homeownership among first-time homebuyers.
5. The proposed project would encourage local financial institutions to lend to assisted homebuyers.

Moderate (200 Points)

1. The proposed project has potential to meet homeownership needs in the community, and there are minor feasibility questions regarding implementation.
2. Homeownership needs in the community are documented, but not as well as in other applications.
3. The proposed project would include efforts to affirmatively further fair housing through homeownership.
4. The proposed project would educate and inform citizens of homeownership assistance available through the project.
5. The proposed project would not include private sector involvement.

Minimal (100 Points)

1. There are serious feasibility questions regarding the implementation and execution of the proposed project.
2. The proposed project would have little impact upon homeownership needs in the community.
3. The proposed project would contribute minimally to fair housing in the community.
4. The proposed project would marginally aid first-time homebuyers versus all homebuyers.

Insignificant (0 Points)

1. The proposed project has major feasibility questions which would inhibit its implementation and execution.
2. The proposed project does not address identified homeownership needs in the community.
3. The proposed project would not actively affirmatively further fair housing.
4. The proposed project would be of little benefit to first time homebuyers.

(b) *Program Impact—Single Purpose—Public Facilities Affecting Public Health and Safety.* In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact

cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible: the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included in the support quantification.

In order to show that the project is likely to impact upon the problem, the following items should be covered:

(1) Total project costs. Total project costs should be documented by qualified third party estimates, and be as recent as possible.

(2) Source of other funds. To the extent that CDBG funds will not cover all costs, the source of other funds should be identified and committed. If local funds are to be used, the applicant should show both the willingness and the ability to provided the funds).

(3) How the project will solve the problem. The applicant should demonstrate that the project will completely solve the problem and, if applicable, the applicant should address whether the proposal would be satisfactory to other State/local agencies which have jurisdiction over the problem.

(4) Cost effectiveness of the proposal. The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered.

(5) Reasonableness of service area. The applicant should address whether the service area claimed for the project is reasonable, in view of the nature of the proposed project, and if not, the applicant should address what effect a more realistic appraisal would have on overall benefit to low and moderate income persons.

(6) Project impact on public health and safety; and

(7) Other applicable feasibility issues have been addressed.

Individual projects often vary in the extent to which they meet the criteria outlined above. Therefore, it is difficult to define precisely those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all applications receiving a particular rating will match point-for-point all the criteria in the same way. The following standards will be applied:

Maximum (400 Points)

1. Need is serious, current and requires prompt attention.
2. Program would resolve the problem completely, either through funds requested or with the support of other resources already committed.
3. No other obstacles to timely and effective implementation of the program exist.
4. Benefits a large number of persons when compared to other public facility projects.
5. Demonstrates that applicant has considered and, as appropriate, will use alternative cost effective methods or material in the execution of the project.
6. Public health and safety concerns are fully resolved by the project.

Substantial (300 Points)

1. Serious need is shown.
2. Program would resolve the problem completely.
3. There are no major feasibility questions.
4. Benefits a substantial number of persons.
5. Evidence that efforts have been made to minimize project costs through use of alternative methods and materials, as appropriate.
6. Public health and safety concerns are substantially resolved by the project.

Moderate (200 Points)

1. Serious need is shown, but is not as serious or well documented as other applications.
2. Program may not meet the need as completely as in some other applications.
3. There may be some questions relative to feasibility.
4. Benefits a significant number of persons.
5. Evidence that efforts have been made to minimize project costs.
6. Public health and safety concerns are partially met by the project.

Minimal (100 Points)

1. Some need is evident, but is not serious.
2. Only a portion of the need would be met or the problem would not be resolved completely.
3. There are serious feasibility questions.
4. Benefits only a small number of persons.
5. Little evidence that efforts have been made to minimize costs.
6. Public health and safety concerns are minimally addressed by the project.

Insignificant (0 Points)

1. No clear need has been demonstrated.
2. Program is not appropriate to meeting described needs, or there is serious doubt that there would be much impact on needs.
3. There are major feasibility questions.
4. Benefits a very small number of people.
5. No evidence that efforts have been made to minimize project costs.
6. Public health and safety needs are not addressed by the project.

(c) *Program Impact—Single Purpose—Economic Development Projects.* Economic Development Projects are defined as those activities which directly address the employment needs of low and moderate income persons in the applicant jurisdiction. While most often provided in the form of direct loans or infrastructure improvements, economic development assistance also may include equity investments and interest subsidy grants. It is important to note that whatever the form of the assistance, it must be demonstrated clearly in the application that the proposed scope of activities cannot be undertaken without the provision of CDBG assistance.

As discussed earlier in this section of the NOFA, each individual Single Purpose project will receive a separate impact rating. Applicants whose proposed economic development program will include multiple proposals should determine the most appropriate form of submission. This determination will require a choice as to either the incorporation of all proposals into a single project or the submission of separate projects for each proposal (each transaction will be considered a separate project). The single project format presents an "all or nothing" situation. In determining the appropriate submission format, applicants should consider the ability of a transaction to rate well on its own, based on the magnitude of employment impact, size of the financial transaction and the other factors discussed in this section.

The submission of proposals as separate projects must be clearly designated by the applicant with individual Needs Descriptions, Community Development Activities, Impact Descriptions and Program Schedule forms, including an appropriate name for each project on HUD Form 4124.1.

In addition to the standard submission requirements, Small Cities applicants must submit information that demonstrates that CDBG funds are needed for the proposed project or activity, and that the CDBG Program's national objectives are met. HUD will evaluate this material as part of its Eligibility Review prior to considering an application for funding in the FY 1992 competition. The following is a discussion of some of the factors HUD will consider in assessing projects in these two key areas:

(i) *The Appropriate Determination.* HUD requires that economic development activities undertaken with CDBG funds be appropriate to carry out an economic development project. This means that the scope of the proposed activity cannot be accomplished without the use of CDBG funding, and that the amount and form (e.g., rate, term, etc.) of the CDBG assistance is reasonable and prudent. Where CDBG assistance will be provided directly to a for-profit

development entity, such entity must demonstrate the financial necessity of the amount and form of the CDBG funding. Further, applicants should attempt to demonstrate that each economic development project has a reasonable likelihood of economic success.

Applicants must document in writing the financial analysis of the project's need for assistance, as well as public benefit factors that were considered in making its determination that assistance is appropriate. For the public benefit portion, the type of factors to consider include: the number and type of jobs to be made available, in relation to the needs of low- and moderate-income and other persons who are likely to be employed or retained for employment; and increases to the tax base including property, sales and income taxes or increases in needed services which result from the activity. This list is not exclusive, but, in any case, the applicant is expected to provide clear documentation on how the decision was reached.

The written documentation of the financial analysis of the project's need should use the following steps:

1. Determine Project Type

There are two basic types of projects: Real Estate Projects and User Projects. Determining the project type is important since each is evaluated differently.

a. In a Real Estate Project, the private developer buys/builds/renovates a piece of real property with the goal of selling or leasing that property to another party for a profit.

b. In a User Project, the entity seeking the assistance is also the owner/lessee and the occupant/user of the property. Typically User Projects involve the construction of, or an addition to, an industrial or commercial facility, or the procurement of equipment.

c. There also may be hybrid projects. An example is the manufacturing company which creates a subsidiary or independent entity to build and own a facility which the manufacturing company leases. In such situations the analysis must discover which entity/transaction is in need of CDBG assistance.

2. Project Costs

Evaluate the proposed project costs (the uses of funds to complete the project). Cross-check costs with appropriate industry standards. The goal is to conclude that all costs are reasonable. Cross-checking should include hard and soft costs, particularly developer's fees.

3. Verify and Maximize Private Sources of Funding (the sources of funds necessary to complete the project)

Both private debt and equity must be verified. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to delivery. All private sources should be maximized for the given project. No CDBG funds should substitute for available private funds.

4. Determine Reason for the Need for CDBG Assistance to Complete the Project

There are three general, justifiable reasons for CDBG assistance to both Real Estate and User Projects.

a. *Financing Gap.* The amount that the private sector can raise is only a portion of the debt and equity funds necessary to complete the project. Therefore, a gap between sources and uses exists, and CDBG fills the gap.

b. *Rate of Return (ROR).* The private sector can raise sufficient debt and equity to complete the project, but the returns to the developer/user are inadequate to motivate an "economic person" to proceed with the project—that is, project risks outweigh rewards.

c. *Location.* For either a Real Estate or User Project in its most simplified version, the private sector entity is deciding between Site A and Site B for its project. The CDBG grantor wants the project at Site A, but the private entity argues that the project will cost less at Site B and that a subsidy will be required to equalize its costs to induce it to locate at Site A. The reasons for the cost differential are varied and must be evaluated on a case by case basis. Most common reasons are: on-site costs (e.g., soil conditions), prices of land (downtown versus suburban), distance to markets, and special off-site costs (e.g., road, sewers, etc.). The objective here is to quantify the cost differential to the extent possible between Site A and B so that the financial needs of the business may be judged in relationship to the public benefit and avoid an undue enrichment of the business.

5. Size the CDBG Assistance

Based on the type and extent of the need as detailed in Step 4, determine the minimum amount of CDBG funds necessary to stimulate the private investment. This analysis generally will require a 2 to 5 year pro forma for the proposed project depending on the complexity of the project and when its financing is expected to stabilize. Ideally, the private sector applicant for CDBG funds will submit one pro forma with 100 percent private financing and a second pro forma with CDBG funding.

6. Price the CDBG Loan

If the CDBG subsidy is to be a loan to a private entity, the debt service payments should balance the maximum return to the public lender with the economic health of the project. Returns to the developer in excess of industry averages should be avoided, but too high an interest rate for the CDBG assistance may weaken the project. The most direct pricing procedure is to work backwards from the pro forma's cash flow dollars available to service the CDBG loan (after project expenses, private loan debt service, and an appropriate return to the private entity) to an interest rate and term that equates to the available cash flow.

When CDBG assistance is required by the applicant to provide necessary support activities for an economic development project (e.g., infrastructure improvements), the applicant must document the unavailability of other funding sources, including municipal bonding and other Federal and State programs. Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis of market data which indicates an inordinate risk in the undertaking of the project will affect the overall rating of program impact.

(ii) *Meeting National Objectives: Employment and the Low/Moderate Income Test.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low and moderate income persons. Therefore, the extent to which the proposed project will directly address employment opportunities for low and moderate income persons in the applicant jurisdiction will be a primary factor in HUD's assessment of the proposed program.

Projects that provide for economic development assistance will be considered to benefit low and moderate income persons where the criteria of 24 CFR 570.208(a)(4) is met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are either: actually taken or retained by such persons; or can be considered to be available to them because:

—Special skills that only can be acquired with substantial training or work experience, or education beyond high school, are not a prerequisite to fill such jobs, or the business nevertheless agrees to hire unqualified persons and provide them training; and
—The local government or the assisted business take actions that would ensure that low and moderate income persons receive first consideration of filling such jobs.

When making judgments concerning whether an individual qualifies as a low and moderate income person, both the family size and income of the entire family must be considered. This consideration is necessary because a low and moderate income person is defined as a member of a low and moderate income family.

First consideration means that a business gives objective consideration to the employment of low and moderate income persons. Such objective consideration normally will involve an interview. In order for the business to demonstrate that it considered a low and moderate income person, the business must either agree to: obtain and keep on file, for verification, the necessary information about the person to determine low and moderate income status; or agree to consider referrals from certain sources. The referrals may be from the locality or a State, County or local employment agency that agrees to refer individuals who they determine to be a low and moderate income person based on HUD's income levels and considering both family income and size. Such entities making referrals must maintain the documentation they use for verification. HUD also will categorically accept as low and moderate income persons those referred from Job Training Partnership Act (JTPA) program (except for the Dislocated Worker Program, title III) because of the known income restrictions of that program.

HUD also will accept a written certification by a person of his or her family income and size to establish low and moderate income status. The certification may simply state that the person's family income is below that required to be low and moderate income in that area. The forms for such certification must include a statement that the information is subject to verification.

The first consideration approach has been developed by HUD with the expectation that, in most instances where it is applied, the outcome will be that over 51 percent of persons hired will be low and moderate income. Accordingly, grantees electing to use this approach will be expected to follow some basic principles. For example, merely considering 51 low and moderate income persons for 100 created jobs is normally not sufficient, because most jobs are not offered to, or taken by, the first person interviewed. The hiring practices of the business should be analyzed. If it appears that the normal practice is that only one of three persons interviewed are hired, then a comparable number of low and moderate income persons should be given first consideration for the jobs. The distance from residence and availability of transportation to the employment site also should be considered in determining whether a particular low and moderate income person can seriously be considered an applicant for the job. The business must be required to consider a sufficient number of low and moderate income job applicants in order to meet the intent of this requirement.

The application must contain adequate documentation to fully explain and support the process to be used to ensure that project(s) comply with the low and moderate income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process.

Retained jobs are limited to the total of those jobs known to be held by low and moderate income persons at the time the assistance is provided, together with any other jobs that reasonably can be expected to become available through turnover to low and moderate income persons in a period of two years thereafter, using the same standards for newly created jobs.

Clearly, retaining a job that already is held by a low or moderate income person would qualify that job as benefitting a low and moderate income person. In determining whether the person already occupying a retained job is low or moderate income, it is the person's family income at the time the CDBG assistance is provided that is determinative. However, it is recognized that a business currently may be employing less than a majority of low and moderate income persons, or may be unable to ascertain the family size and total family income of some or all of its employees. Additionally, it is possible that a business might be unwilling to try to acquire such information. Accordingly, this accounts for why the standard for retained jobs gives credit for jobs based on jobs which will be made available to such persons over the next two years.

Accordingly, if an assisted business is able to demonstrate that at least 51 percent of the jobs it is retaining are held at the time the CDBG assistance is provided by low and moderate income persons, the activity would qualify as meeting the first national objective. Where the business does not know or cannot determine the income status of some or all of its employees' families at the time CDBG assistance was provided, or if a majority of the jobs currently are not held by low and moderate income persons, it still can qualify, if it can show that at least 51 percent of the retained jobs will be made available to low and moderate income persons over the two year period following receipt of the CDBG assistance. These two approaches can be used in combination, as well. Therefore, the total of those jobs known to be held by low and moderate income persons, together with jobs not known to be held by low and moderate income persons and that can reasonably be expected to become available through turnover to low and moderate income persons in a period of two years after the assistance is provided may be counted, provided low and moderate income persons are given first consideration as described previously for such turn-over jobs.

An example may be helpful to demonstrate how this would work. Assume that funding results in the retention of 100 jobs, of which 40 are known to be currently held by low and moderate income persons. Assume also that based on analysis of the business' past experience, an additional 15 of the retained jobs currently not held by low and moderate income persons are expected to turn over within the next two years, and the business agrees to ensure that special skills or education will not be a prerequisite, and that first consideration will be given to low and moderate income persons in the hiring for the 15 jobs expected to turn over. Under these circumstances, 55 percent of the total number of jobs would qualify as involving the employment of low and moderate income persons, i.e., 40 jobs "held by" and an additional 15 "made available".

To the extent feasible, the material listed below should be submitted for Economic Development projects. The material should be submitted for each proposed activity (e.g. each loan will be considered a separate activity), whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since Economic Development projects are rated against each other, the more completely these submission

requirements are met, the greater the potential exists for enhancing the impact score of the project.

1. A letter from each appropriate developmental entity which includes at least the following information:

a. A detailed physical description of the project with a schedule of events and maps or drawings as appropriate.

b. The estimated costs for the project, including any working capital requirements.

c. A discussion of all financing sources, including the necessity and terms of the CDBG assistance and the proposed lien structure. The amount, source and nature of any equity investment(s) must also be provided as well as a commitment to invest the equity.

d. A discussion of employment impact which includes a schedule of newly created positions. The schedule should identify the number, salary and skill level of each permanent position to be created. The applicant must also demonstrate and document how persons from low and moderate households will be accorded first consideration for employment opportunities.

e. A discussion of all appropriate feasibility issues including, but not limited to: site control, zoning, public approvals and permits, corporate authorizations, infrastructure, environment and relocation.

f. An analysis and summary of market and other data which supports the anticipated success of the project.

2. A development budget showing all costs for the project, including professional fees and working capital.

3. Documentation to support project costs. Documentation generally should be from a third party source and be consistent with the following guidelines:

a. Acquisition costs should be supported by an appraisal.

b. Construction/renovation costs should be certified by an architect, engineer or contractor. Use of Federal Prevailing Wage Rates should be cited where applicable.

c. Machinery and equipment costs should be supported by vendor quotes.

d. Soft costs (e.g., legal, accounting, title insurance) need be substantiated only where such costs are anticipated to be abnormally high.

4. Letters from all financing sources discussing, at a minimum the amount and terms of the proposed financing, and the current status of the application for funding.

5. Historical financial data of the development entity, preferably for the last three years. This information may be submitted under separate cover with confidentiality requested. It is recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

6. A two-to-five year cash flow pro forma with accompanying notes citing basic assumptions.

7. The applicant's assessment of the project's consistency with the CDBG program eligibility necessary/appropriate) standards and with the national objectives requirements.

(iii) *Review Criteria.* In evaluating and rating economic development projects, HUD will analyze the following factors:

1. Employment

The extent to which the proposed project will directly address employment opportunities for low and moderate income persons in the applicant's jurisdiction will be a primary factor in HUD's assessment of program impact. Applicants are reminded that for an activity to be consistent with the statutory objective of low/moderate income benefit, as a result of the creation or retention of jobs, at least 51 percent of created or retained employment opportunities must be held by, or made available to, persons from low and moderate income families. Applicants must fully document and describe employment benefits. In addition, applicants should address the following issues:

a. All employment data should be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, but applicants should take into account such factors as seasonal and part-time employment.

b. The amount of CDBG assistance required to produce each full-time equivalent job will affect the impact assessment *by* HUD. Lower CDBG costs per job are preferable to higher CDBG costs per job. Such assessments of impact will be done on a comparative basis among all projects submitted, rather than by comparison to a given standard.

c. The use of CDBG funds to assist in the transfer of operations between communities will generally be considered as having *no* employment impact. Exceptions to this rule may include, among other things, an expansion in addition to the transfer or the demonstrated infeasibility of continuing operations at the current site. If the applicant proposes to assist in a transfer of operations based on an exception to the general rule, HUD should be contacted early in the planning process to discuss the viability of such a proposal. Failure to do so could result in the application receiving 0 impact points.

2. Feasibility

A high impact will not be given to projects which are likely to encounter feasibility issues which would hinder the timely completion of the project. Such issues include, but are not limited to: site control, zoning, public approvals and permits, infrastructure, environment, and relocation. Applicants should address these and any other applicable issues and provide documentation where appropriate.

Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis or market data, which indicates an inordinate risk in the undertaking of the project, will affect the overall rating of program impact.

3. Leverage

Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. While HUD does not prescribe a minimum standard for leverage, projects must conform to the requirements of the Appropriate Determination discussed above. Projects which fully conform with those requirements by providing the maximum feasible level of private investment will be considered as having appropriate leverage.

4. Taxes

While not a primary factor in the evaluation of impact, projects which will augment the applicant's tax base may have a positive effect on the rating of program impact. It is recognized, however, that good projects do not always result in increased tax revenues due to their nature.

5. Repayment

Where CDBG repayments are to be made in some manner to the applicant, the proposed use of those repayments for economic development purposes will be considered.

(iv) *Scoring.* Individual projects often vary in the extent to which they meet the criteria outlined above. It is, therefore, difficult to precisely define those combinations of characteristics which constitute, for example, "maximum" versus "substantial" impact. Not all applications receiving a "maximum" rating will match all the criteria, point by point, in the same manner. The following standards will be applied:

Maximum (400 Points)

1. The analysis of market and other risk data provides reasonable assurance that the project will be successful.

2. The project will have a direct and positive impact on employment opportunities for persons from low and moderate income households, and the extent of that impact compares favorably with that of other applicants.

3. All appropriate feasibility issues have been addressed (including the submission of firm private financing commitments) and there is reasonable assurance that the project will be completed in a timely manner.

4. The Public Benefits (e.g., loan repayments, increases to the tax base including property, sales and income taxes to the area, other development likely to be stimulated by the activity) to be derived from the project are considerable relative to other proposals.

5. The infusion of CDBG funds will leverage a substantial investment of private and other dollars.

Substantial (300 Points)

The criteria for Maximum (400 Points) is met with either of the following exceptions:

1. While the project will have a direct and positive impact on employment opportunities for persons from low and moderate income households, the extent of that impact is less than that demonstrated by applicants receiving the maximum rating.

2. While there are no *major* feasibility problems, there are feasibility issues which have not been fully addressed and/or may have a negative effect on timely implementation of the project. However, overall success of the project appears achievable.

In addition:

3. The Public Benefits derived from this project will be greater than that received by the majority of applicants.

4. CDBG funds will leverage more private and/or other public dollars than the majority of projects in the competition.

Moderate (200 Points)

The project presents at least one of the following deficiencies which would affect the appropriateness of CDBG funding:

1. An analysis of the project indicates that the likelihood of the availability of other required financing is questionable.

2. There is a major feasibility issue which is likely to affect completion of the project.

3. The analysis of market and other risk data indicates a likelihood that the project will not create a significant employment impact.

4. The number of employment positions to be created is significantly low and/or the CDBG cost per employment position is significantly high in relation to other applications.

In addition:

5. There will be some Public Benefits resulting from this project.

6. CDBG dollars will leverage a moderate amount of private and/or other public funds relative to other projects.

Minimal (100 Points)

The project presents at least one of the following serious deficiencies which would affect the appropriateness of CDBG funding:

1. An analysis of the project indicates that other required financing is unlikely to be available.

2. There will be few, if any, Public Benefits resulting from this project.

3. CDBG dollars will leverage little private and/or other public investment in the project.

Insignificant (0 Points)

The activity presents at least one of the following serious deficiencies which indicates the inappropriateness of CDBG funding:

1. It is clear that the activity cannot be accomplished based on any combination of the following factors:

(1) Major feasibility issues.

(2) Inordinate risk.

(3) Unavailability of required financing.

2. The activity will not have a direct impact on employment opportunities for persons from low and moderate income households.

3. The completion of the project will result in no Public Benefits or will be detrimental to the community.

4. No other investment will be triggered by the use of CDBG funds for this activity.

(2) *Program Impact—Comprehensive Program Grants.* Comprehensive programs must address a substantial portion of the identificable community development needs of a defined area(s). The extent to which activities are coordinated will be a major consideration in the evaluation of program impact. In defining an appropriate area for comprehensive treatment, applicants should consider the severity of condition within the area and the resources to be provided. The impact is greatest where community development needs will be substantially addressed over a reasonable period of time. Exceptions to the requirement that activities be concentrated within a defined area or areas may be made if the applicant can demonstrate that the proposed program represents a reasonable means of addressing the identified needs.

HUD will assess the impact of the program for each of the four program design criteria selected, based on the factors described below. Applicants must describe fully the extent to which the program will address each criterion selected. HUD will compare all programs which address a particular criterion. The best proposal for that criterion will be the standard by which all others will be judged, although that proposal will not necessarily be awarded a significant impact.

Assignment of Program Impact points for a Comprehensive Grant application is a two-step process. First, the potential of the proposed program of activities to achieve the results intended by each selected criterion when considered in relation to other communities selecting the same criterion is assessed. A numerical value is assigned, based on the following:

The results would have insignificant impact—0 Points

The results would have minimal impact—2 Points

The results would have a moderate impact—4 Points

The results would have a maximum impact—8 Points

After each of the four criteria selected by an applicant is rated and a value assigned, the values are summed. A minimum of 12 points will be required at this stage in order for the application to be eligible for further consideration. A score of less than 12 points indicates that the proposed activities would have insufficient impact to warrant funding.

Following this process, the actual points for impact are determined by dividing each applicant's Program Impact Score by the highest Program Impact Score achieved by any applicant and multiplying the result by 400.

Listed below are the ten design criteria and the standards which HUD has developed to evaluate each criterion. The applicant must select and address four of the criteria. In addition to these standards, the Submission Requirements and Review Criteria for Economic Development Projects under the Single Purpose Program, apply in determining the eligibility and rating for economic development proposals that are a part of a Comprehensive Program. It is particularly important that applicants fully address the economic development criteria should Criteria 5 and 6 be selected.

(a) *Criterion 1—Supports Comprehensive Neighborhood Conservation, Stabilization, Revitalization, New Housing Construction or Promotes Homeownership.* The applicant must describe the degree to which the identified needs of a defined area or areas will be addressed in a coordinated manner. In defining an area or areas, applicants should examine carefully the extent of needs and the resources available to address those needs. Where an area has not been defined, the applicant should describe fully the appropriateness of implementing activities on a community-wide basis.

In evaluating the impact of the proposed program, HUD will examine the following factors:

—Nature and severity of neighborhood needs.

—Extent to which needs will be addressed.
—Amount of funds required to implement neighborhood activities.
—Extent to which activities are coordinated to address housing, public facility and economic development needs. Program impact will be the greatest where a substantial portion of the needs within a defined area will be met.

The strongest consideration for housing rehabilitation programs is given to those applicants which have designed their housing programs by taking into account both structural conditions and appropriate financing mechanisms. The proposed program should be structured in a way to be marketable, given income and structural characteristics of the neighborhood area. The physical needs of residential or mixed use properties must be well stated and documented in terms of substandardness. Applicants will be expected to maximize the leveraging of private funds, encourage and participation of local financial institutions, and develop realistic program guidelines. Private funds available from financial lending sources should be established. If leveraging is infeasible, the applicant must fully document that fact. The most effective housing programs will be those which will address a substantial portion of the identified needs, while maximizing the impact of Federal funds.

For those programs that will support the construction of new residential units, project feasibility will be critical. While the extent of need and number of units to be created will be a primary consideration in evaluating the impact, issues of site control, marketability and assurance of private financing must be addressed, and must be documented.

Homeownership activities will be reviewed in terms of: how effectively the program would meet homeownership needs identified in the community; and the extent to which they would make effective use of available funds.

Public service activities also may be considered in conjunction with other activities under this criterion. Again, any such activities would need to meet demonstrated needs within the community.

The impact of public improvement activities will be assessed primarily on the documented severity of the need and the extent to which the proposed program will address that need. Those needs which directly affect the public safety and welfare will be considered the most severe.

Economic development activities also will be evaluated by the extent to which they will alleviate the identified problems. However, the assessed impact for these activities is often diminished due to feasibility concerns. In addition to quantifying the extent of the anticipated improvements, applicants must demonstrate that the proposed activities can be carried out—that is, documentation with respect to private participation in such activities must be thorough. Letters of only general interest, by either property owners or other private sector participants, do not necessarily ensure their participation in the program. Some degree of assurance of participation should be presented.

Review Criteria and Submission requirements for Housing described under the Single Purpose Program apply in evaluating and rating housing proposals that are a part of a Comprehensive Program.

(b) *Criterion 2—Provides Housing Choice within the Community either Outside Areas with Concentrations of Minorities and Low and Moderate Income Persons or in a Neighborhood which is Experiencing Revitalization and Substantial Displacement as a Result of Private Reinvestment, by Enabling Low and Moderate Income Persons to Remain in their Neighborhood.* If a proposed program provides housing choice within the community outside areas with concentrations of minorities and low and moderate income persons, the application must document that there are existing areas which do, in fact, contain concentrations of low and moderate income families and minorities. The proposed program, if implemented, must result in additional housing assistance being provided in areas of non-concentration. Communities with no minorities or minority concentrations may receive impact points where opportunities are provided outside areas of low and moderate income concentration. The degree of impact will be based upon the severity of needs, the number of unions to be provided, and the nature and cost of the activities.

In a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, by enabling low and moderate income persons to remain in their neighborhood, the applicant must provide a detailed description of the revitalization efforts within the neighborhood, the amount of displacement of low and moderate income persons, and the manner in which the implementation of the proposed program will enable displaces to remain in the neighborhood. The degree of needs, nature and cost of activities, and percentage of needs to be addressed will be evaluated to determine program impact.

(c) *Criterion 3—Supports the Expansion of Housing for Low and Moderate Income Persons by Providing Additional Housing Units Not Previously Available.* The proposed program clearly must support, or result in, additional units for low and moderate income persons. The units may result from the rehabilitation of currently vacant structures, conversion of non-residential structures to residential use, or new construction projects for which the proposed program will provide non-construction or construction assistance. Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect program impact. Applicants should address the areas of site control and marketability, in addition to addressing feasibility from the standpoint of project financing. Consideration will not be given to proposed programs which will rehabilitate occupied units or displace current occupants. The impact of the proposed programs will be based upon the degree of needs, the number of units to be created, and the nature and costs of the proposed activities.

(d) *Criterion 4—Addresses a Serious Deficiency in a Community's Public Facilities.* Consideration will be given to the extent of deficiencies, and their relative seriousness, of the identified need. The following factors will be considered:

—Documentation of the seriousness of deficiencies. Appropriate documentation should be provided to substantiate the degree of seriousness. Those deficiencies which directly affect the public safety and welfare will be considered most severe.
—The nature and cost of the proposed activities in relation to the percentage of need to be addressed.
—The extent to which the proposed program will address a variety of deficiencies in public facilities within a defined area.
—Coordination with other activities within the defined area.
—The degree to which the application addresses such feasibility issues as, including but not limited to, the validity of cost estimates by qualified sources, the availability of other funds, site control, and environmental constraints.
—The number of persons to benefit.

(e) *Criterion 5—Expands or Retains Employment Opportunities.* Consideration will be given to proposed programs that will result in the creation of new jobs or retention of existing employment opportunities. The following factors will be considered:

—The number of jobs to be created or retained in relation to the identified needs. Documentation should be provided to substantiate the number and type (permanent or seasonal, full or part-time) of job claimed. Letters from local development agencies or expected participants which express more than general interest would be appropriate. While spin-off development will be recognized, impact will be greater where direct employment opportunities are proposed. With respect to job retention, evidence should be provided to demonstrate that without the proposed program, existing jobs would be lost. The applicant also must address the potential impact of job loss on the community.

—The extent to which CDBG funds are used to leverage private commitments. If leveraging is proposed, applicants should analyze the actual amount of additional funds required to make the project financially feasible. In designing a program to assist existing business expansion or retention, or to encourage new business development, applicants must address whether CDBG funds will be used for infrastructure, land assemblage or other financial incentives. These factors may be important considerations for a firm deciding where to locate and whether to expand or reduce the scope of its operation. CDBG funds may be more effectively used as a loan rather than a grant. In this regard, the CDBG funds would generate additional program resources through loan repayments to the community. It is considered especially advantageous if a revolving loan fund is established and repayments continue to be used to expand or retain employment opportunities.

—The relationship of the activity to other projects being implemented within the defined area.

—The number of persons to benefit.

—Particular attention will be given to the extent to which the Review Criteria and Submission Requirements for Economic Development Projects are addressed (see Single Purpose Program Criteria).

(f) *Criterion 6—Attracts or Retains Businesses which Provide Essential Services.* Consideration will be given to proposed programs which will address the attraction or retention of businesses commonly associated with neighborhood needs (corner grocery stores, dry cleaners, pharmacies, etc.). The applicant must describe clearly the nature and anticipated impact of activities. Documentation in the form of letters from existing or new potential businesses offering a commitment to the program should be included. (Letters of only general interest by property owners do not necessarily ensure their participation in the program, or their willingness to secure debt if private lending is proposed). The following factors will be considered:

—The impact of the proposed program in relation to the identifiable neighborhood needs. The extent of area stability must be documented. In describing the needs of a business district or neighborhood commercial area, such factors as overall structural conditions, business turnovers, and vacancy rates over a period of time should be clearly presented. The formulation of a commercial revitalization program must be based on a thorough assessment of local needs and a realistic program design. An important consideration is whether the proposed program is designed to be marketable given income characteristics, local business condition, etc. The condition of supporting public facilities and improvements and their influence on the business environment must be established. If public improvements are proposed in connection with economic expansion or retention, applicants must address the extent to which the lack of these improvements impact on business.

—Attraction/retention must be fully documented by the applicant. With respect to business retention, evidence should be provided to demonstrate clearly and objectively that without the proposed CDBG Program, existing retail/commercial businesses would curtail their operations. The applicant also must document and address the potential impact of the business loss on the community and/or target area. HUD would accept as examples of clear and objective evidence a notice issued by the business to affected employees, a public announcement by the business, or financial records provided by the business that clearly indicate the need for closing or moving all or portions of the business out of the area.

—The amount of private funds to be leveraged. If leveraging is proposed, applicants should analyze the actual amount of private or public funds needed to make the project financially feasible. In this regard, the establishment of a revolving loan fund, in which repayments would continue to be used to attract or retain businesses providing essential services, would be considered a positive factor.

—The relationship of the activity to a comprehensive approach to meeting the overall needs of the neighborhood area.

(g) *Criterion 7—Removes Slums and Blighting Conditions.* Consideration will be given to proposed programs which will have a direct impact on the removal of slums and blighting conditions. Appropriate areas may include, but are not limited to deteriorated residential and/or commercial structures, inappropriate land uses, or blighting conditions such as repeated flooding and drainage problems, serious deficiencies in public facilities. Applicants should be aware that slum and blight activities can be carried out under the national objective of benefit to low and moderate income persons. If an applicant elects to qualify the activity on this basis, the degree of low and moderate income benefit must be demonstrated by the applicant.

Where residential or commercial rehabilitation activities are proposed as preventing or eliminating blighting conditions, the application must clearly document the number, type, and condition of deteriorating or deteriorated buildings in the designated target area. Detailed conditions of the physical condition of buildings or structures would be appropriate to establish the extent of substandard and blighting conditions. For rehabilitation of residential structures to be designed as eliminating blight and addressing an area's deterioration, the buildings must be considered substandard under local definition.

When an area is determined to be blighted, there must be a substantial number of deteriorated or dilapidated buildings, or the public improvements throughout the area must be in a state of deterioration. CDBG funds are not intended to be used to treat areas that would be widely regarded as attractive, rather than blighted. Additionally, the proposed CDBG program or project must be designed to eliminate or address a substantial portion of the identified blighting conditions or physical decay. CDBG assistance for facilities or structures, which are in good repair and show no real signs of deterioration, would not score well under this

criterion. For instance, minor facade improvements to a commercial building alone would not indicate that a building is in poor condition. However, assistance to a commercial area which consists of deteriorating businesses, storefronts in serious need of rehabilitation, a high vacancy factor, and public improvements, such as parking areas and parking access improvements which are in need of physical upgrading, would have a direct impact on eliminating blighting conditions. Public improvements that are so deteriorated that they constitute a genuine threat to the continued viability of an area by discouraging private investment necessary to maintain properties may also be considered a blighting influence. The following factors will be considered:

—Extent and documented seriousness of conditions/needs. References to engineering studies, surveys or letters from appropriate local agencies should be included.
—Impact of the proposed program in relation to providing long-term permanent solutions to alleviate the identified need. Short-term or superficial improvements will not be considered to have a significant impact.
—Coordination with other projects and activities which will address needs within the defined area.
—Nature of any proposed re-use: degree of commitment for re-use.

(h) *Criterion 8—Resolves a Serious Threat to Health or Safety.* The applicant must describe the condition which poses a threat to public health and safety. A serious threat refers to a situation which demands immediate attention. This may be a condition that has just occurred or a condition which, though long standing, has intensified to become an immediate danger.

Applicants should be aware that imminent threat/urgent need activities can be carried out under the national objective of benefit to low and moderate income persons. If an applicant elects to qualify the activity on this basis, the degree of low and moderate income benefit must be demonstrated by the applicant. Consideration will be given to the following:

—The extent to which a serious threat to health or safety is documented, or of recent origin, or which recently became urgent. Documentation should include the identification of the existing conditions to be appropriate agencies.
—The extent to which the serious threat will be resolved.
—The submission of documentation which demonstrates that other financial resources are insufficient or unavailable to resolve such needs.
—The degree to which the application addresses issues such as the validity of cost estimates by qualified sources; the availability of other funds; site control and environmental conditions; or other public body approvals.
—The number of persons to benefit, as well as the number of individuals actually threatened.

Note: This criterion is generally more restrictive than Criterion 4. The existing condition must pose a serious and immediate threat to the health or welfare of the target population.

(i) *Criterion 9—Supports Other Federal or State Programs Being Undertaken in the Community or Deals with the Adverse Impact of Another Recent Federal or State Action. The Other Federal or State Program or Action Must Be of Substantial Size or Impact in the Community in Relation to the Proposed Program.* The application must contain a complete description of the Federal or State Program(s) (excluding other CDBG Programs) which currently are underway, or a complete description of the adverse impact of a recent Federal or State action. A Federal or State program or action not yet initiated, only will be considered where the application documents the certainty and approximate date of the commencement of such program or action.

The proposed CDBG Program must demonstrate clearly the magnitude of the effect of the Federal or State Program or action on the community. The degree to which the proposed CDBG Program will support the Federal or State program, and/or to the extent to which the adverse impact of Federal or State action will be mitigated, also must be demonstrated.

In addition to the above, the nature and costs of the proposed activities will be considered in determining the degree of impact.

(j) *Criterion 10—Supports Energy Production or Conservation.* This criterion will be judged, and points will be awarded, based upon the community's ability to demonstrate that the proposed program will support energy production or conservation. Applicants are urged to develop innovative approaches toward addressing energy needs with Small Cities CDBG funds. Energy considerations can be a factor in most activities proposed by smaller communities. Attention should focus on new methods of producing energy or conserving energy where possible. In developing and evaluating proposals, there are a number of energy aspects to consider. The following factors will be considered:

—Cost efficiency—Relationship of dollar amount to benefits to be derived. The applicant must document estimates of energy costs which are to be saved as a result of the proposed program. The proposed program should make maximum use of non-CDBG resources as well as CDBG funds. Appropriate documentation must be provided to ensure that the proposal is economically feasible.
—The extent to which the proposed program will support other programs currently aimed at addressing energy production or conservation needs of the community. From a management standpoint, proposed projects should be consistent with needs or objectives of any plan for energy management or conservation. Applicants should pursue the availability of other resources from Federal or State energy related programs. The degree of commitment of other resources should be established. State energy offices, private as well as municipally-owned utility companies, and home heating oil companies may be appropriate entities to be involved in the development and planning of proposals.
—The application should address whether the project is based on appropriate technology, materials and methods to maximize energy conservation. Engineering reports or studies would be appropriate evidence to support the overall feasibility of the project. The conservation of existing facilities, where appropriate, rather than proposing new construction may be more economical.
—While housing rehabilitation programs which include weatherization/winterization components will be considered, they generally will not be presumed as addressing a severe need unless unique conditions are specifically identified and cost savings are properly documented.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 65 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract or enumeration district base, and they must be in accordance with the 1980 Census data. Only population data from the 1980 Census will be acceptable for purposes of this section.

Please note that a "minority" is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan. For purposes of this section, women are not considered minorities.

Counties claiming points under this criteria must be county wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead agency only.

The following factors will be used to judge outstanding performance in these areas. Please note that the criteria are the same for Comprehensive and Single Purpose applicants, and that points for outstanding performance may be claimed under each criteria:

(1) *Housing Achievements* (40 points total).

(a) 20 Points—Provision of Assisted Housing—Providing assisted housing for low and moderate income families, located in a manner which provides housing choice in areas outside of minority, or low and moderate income concentrations.

Points will be awarded where both of the following criteria are met: (i) More than one-third of the housing assistance provided by the applicant in the last five (5) years (excluding Section 8 existing and housing assistance provided in place) has been in Census Tracts (CT) or Enumeration Districts (ED) having a percentage of minority population which is less than the minority population in the community as a whole; and

(ii) With regard to the Section 8 Existing Program, a community must show the location (CT or ED) of its currently occupied family units by race/ethnicity. Points will be awarded if more than one-half of the minority assisted families occupy units in areas which have a lower percentage of minority population than that of the community as a whole.

A community with no minorities must show the extent to which its assisted housing is located in outside areas of concentration of low and moderate income persons. In order to receive points under this criteria, applicants should follow the process outlined in (a) and (b) above, substituting low and moderate income persons and families for minority persons and families. Applicants addressing the first criterion, must use a map indicating the location of all assisted housing and a narrative which indicates the number of units and the type of assisted housing. The map also must show the general location of low and moderate income households and minority households, giving the numbers and percentages for both.

In order to qualify as housing assistance provided, the units being claimed must be part of a project located outside minority or lower income concentrated areas which has, at a minimum, received a firm commitment from the funding agency.

(iii) Points also may be awarded for efforts which enable low and moderate income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of (a) and (b) in order to receive points. Points will be awarded where more than one half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

—The neighborhood experienced revitalization;
—The amount of displacement was substantial;
—Displacement was caused by private reinvestment;
—Low and moderate income persons were permitted to remain in the neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded where there is a balanced distribution of assisted housing throughout the community.

(b) 20 Points—Implementation of a HUD-approved New Horizons Fair Housing Assistance Project or a Fair Housing Strategy that is equivalent in scope to a New Horizons Project.

The applicant must demonstrate that it is implementing a HUD-approved New Horizons Fair Housing Assistance Project or demonstrate participation in a HUD-approved county/State/regional New Horizons Project; or that the applicant is implementing a fair housing strategy that is equivalent in scope to a New Horizons Project. If the applicant is implementing a New Horizons Project, it must include:

—The date it was approved (by HUD); and
—Those actions taken to implement the plan.

If the applicant is implementing an equivalent fair housing strategy, it must include:

—The strategy being implemented;
—Those actions taken to implement the strategy.

Please note that a fair housing strategy must include the four elements of a New Horizons Project in order to be considered equivalent in scope:

—Local compliance activities;
—Educational programs to enhance the clarity and understanding of the community's fair housing policy. For communities with few or no minorities, this should include publication in the surrounding communities of the applicant's policy of fair housing for minorities and the disabled;
—Assistance to minority families; and
—Special programs (e.g. utilization of Community Housing Resource Board (CHRB) Programs, efforts to encourage local realtors to enter into voluntary agreements to encourage equal access to financial institutions, etc.).

The fair housing strategy must include goals for each of the above elements. The date of adoption or development of the strategy should be indicated, as well as the date proposed activities will be or have been implemented.

(2) *Entrepreneurial Efforts and Local Equal Employment.* Applicants may request points for both of these subfactors and must use the format sheets included in the application.

(a) *Minority Contracting.* Outstanding performance points will be given to those applicants who have demonstrated that they have utilized minority businesses to the following degree. The applicant must demonstrate that at least five percent of all its contracts, based on dollar value, have been awarded within the past two years to minority owned and controlled businesses (businesses that are at least 50 percent owned by minorities) provided that the minority population is five percent or less. If the minority population exceeds five percent, then the applicant must have a corresponding percentage of its contracts awarded to minority businesses; however, 20 percent of the total dollar value of its contracts will be sufficient for award of points for any applicant. The applicable percentage of minority population is the percentage of minorities in the applicant's jurisdiction, or is the county percentage, whichever is higher.

The applicant must provide the information as outlined in the suggested format, showing the name, address, telephone number, contract date and contract amount for each contract or subcontract with a minority business. This information is to be provided in addition to information required on the

HUD Form 4124.4, and should be for the two-year period ending March 1, 1992.

(b) *Equal Opportunity Employment.* In order to be considered for points, if claimed, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

II. Application and Funding Award Process

A. Obtaining Applications

Application kits (previously known to applicants as the "Review Process Statement) may be obtained from either HUD's New York Regional Office or Buffalo Field Office. Applicants in New York, in the counties of Sullivan, Ulster, Putnam, and in non-participating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Regional Office. All other nonentitled communities in New York State should submit their Applications to the Buffalo Field Office. The appropriate addresses for HUD's New York and Buffalo offices are: Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068, Telephone (212) 264–6500; or Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 846–5768.

B. Submitting Applications

A final application must be submitted to HUD no later than Friday, May 8, 1992. A final application includes an original and two photocopies. In accordance with HUD's regulation at 24 CFR 570.443(a)(1), final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, May 8, 1992. If an application is physically delivered to either the New York Regional Office or the Buffalo Field Office, the application must be delivered by the close of business for that office. Applicants should contact the New York Regional Office or the Buffalo Field Office regarding the time that the office closes. Applications must be submitted to the appropriate HUD office at the address listed above in Section A.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on, or postmarked by May 8, 1992. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

C. The Application

An application for the Small Cities Program CDBG Grants is made by the submission of:

(1) A completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;

(2) A completed Standard Form 424; and

(3) A signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying, pursuant to section 319 of the Department of Interior Appropriations Act of 1989, generally prohibiting use of appropriated funds; and, if applicable,

(4) CHAS; and

(5) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

D. Funding Award Process

In accordance with section 102 of the Reform Act and HUD's regulation at 24 CFR 12.16, HUD will notify the public by notice published in the Federal Register of all award decisions made by HUD under this competition. In accordance with the requirements of section 102 of the Reform Act and HUD's regulations at 24 CFR part 12, HUD also will ensure that documentation and other information regarding each application submitted under this notice of funding availability is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with § 12.14(b) of these regulations, HUD will make this material available for public inspection for a period of five years, beginning not less than 30 calendar days after the date on which assistance is provided.

III. Notice of Informational Meetings

HUD will conduct several informational meetings around the State to discuss the Small Cities Program and will conduct application workshops in conjunction with these meetings.

Buffalo, NY—Monday March 9, 1992. Buffalo HUD Office, Lafayette Court, 6th Floor Conference Room, 465 Main Street, Buffalo, NY, 10 a.m. to 1 p.m.

Colonie, NY—Wednesday, March 11, 1992, Memorial Town Hall, Loundon Road, Route 9, Court Room, Newtonville, NY, 10 a.m. to 1 p.m.

Syracuse, NY—Thursday, March 12, 1992, Onondaga County Public Library, The Galleries of Syracuse, Curtin Auditorium, 447 South Salina Street, Syracuse, NY, 10 a.m. to 1 p.m.

Goshen, NY—Thursday, March 12, 1992, Orange County Government Center, County Legislative Chamber, 255–275 Main Street, Goshen, NY, 10 a.m. to 1 p.m.

Please contact either the New York Regional Office or Buffalo Field Office for further information regarding these meetings. Application kits will be available at these meetings, as well from the HUD offices previously identified in Section II of this NOFA. In order to be considered for funding, complete applications (an original and two photocopies of the entire application) must be physically received by the appropriate HUD office on May 8, 1992, or, if mailed, postmarked no later than midnight, May 8, 1992. Applications must be delivered or mailed to the appropriate HUD office at the address indicated in Section II.

IV. Checklist of Application Submission Requirements

The following checklist is intended to aid applicants in determining whether their application is complete:

Application Completeness Checklist

Applicant: _____
Comprehensive Grant _____
Single Purpose Grant _____
Amount Requested $ _____

1. Is amount of funds requested within established maximum?

2. Part I—Needs Description (HUD Form 4124.1)

(a) Single Purpose Grants

i.—Program Area.

——Housing
——Target Area
——Non-target Area
——Public Facilities
——Economic Development (If an "appropriate" analysis is required but is not included, the application cannot be rated.)

ii.—Is description of community development needs included in application?

(b) Comprehensive Grants

i—Have four design criteria been selected and discussed in application?

ii—Is description of community development needs included in application?

3. Part II—Community Development Activities (HUD Form 4124.2)

(a) Has national objective been identified for each activity?

(b) Will 70 percent of grant funds primarily benefit low and moderate income persons? (If not, the application cannot be rated.)

4. Part III—Impact Description (HUD Form 4124.3)

5. Part IV—Outstanding Performance (HUD Form 4124.4)

6. Part V—Program Schedule (HUD Form 4124.5)

7. Part VI—Maps

(a) Location of proposed activities. (Applicants must show the boundaries of the defined area or areas.)

(b) Location of areas with minorities by census tract. (If there are no minority areas, state so on the map.)

(c) Housing conditions if project involves housing rehabilitation. (Number and location of each standard and substandard unit should be clearly identified.)

8. (a) Is Standard Form 424 complete?

Yes No

(b) Is original signature on at least one copy?

Yes No

9. Is Certification signed with original signature?

Yes No

10. If housing activities have been proposed as part of application, has the Comprehensive Housing Affordability Strategy (CHAS) been prepared and submitted to HUD (or included with this application)?

11. Form HUD–2880, Application/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12.

V. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

VI. Other Matters

Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Prohibition Against Lobbying of HUD Personnel. Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–3000. Telephone: (202) 708–3815 or 708–1112 (TDD). (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions. Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.)

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410.

Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to the Small Cities Program of New York State, none of its provisions will have an effect on the relationship between the Federal Government and New York State, or the New York State's political subdivisions.

Family

The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from

issuance of this NOFA, as those policies and programs relate to family concerns.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); 24 CFR part 570, subpart F.

Dated: February 21, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–4683 Filed 2–28–92, 8:45 am]

BILLING CODE 4210–29–M

federal register

Monday
March 2, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Technical Assistance for Economic Development in the Community of West Dallas; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3388, FR-3189-N-01]

Funding Availability for Technical Assistance for Economic Development in the Community of West Dallas

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for technical assistance for economic development in the West Dallas community located in the City of Dallas, Texas.

SUMMARY: This NOFA announces the availability of $475,000 in technical assistance funds to promote the type of economic development activities in the West Dallas community located within the City of Dallas, Texas, described in the report submitted by Sextant Consultants to the Court in the case entitled *Debra Walker* v. *HUD*, No. CA-3-85-1210-R (N.D. Texas) (the "Walker case"). In that case, the plaintiffs claimed that the Dallas Housing Authority (DHA), HUD, and the City of Dallas had engaged in deliberate segregation by race of public housing projects in the Dallas metropolitan area. Although HUD had not been found liable for any such acts, in 1987 HUD and DHA entered into a Consent Decree that provided that the West Dallas project would be reduced in size from approximately 3,500 units to approximately 1,000 units. When Secretary Kemp arrived at HUD, he became committed to permitting 2,000 units to remain as part of an overall revitalization of the West Dallas area. He therefore obtained the services of Sextant Consultants to prepare a plan for such revitalization of the West Dallas area and, in 1990, obtained the Court's permission to submit a plan for the development of the West Dallas community. In the Spring of 1991, HUD submitted the Sextant plan to the Court for approval. The Plan must be approved by the Court before it can be implemented. However, even if the Plan is not approved by the Court, HUD will provide funding for technical assistance requested under this NOFA because the Department believes the assistance would be beneficial toward the revitalization of the West Dallas area.

The West Dallas community is located in the City of Dallas, and has the following boundaries: From the Trinity River on the north and east, to I-30 on the south side, to Loop 12 on the west.

A cooperative agreement will be awarded to the applicant who can design and support the best overall program for achieving the tasks outlined in this NOFA. The NOFA contains information concerning eligibility; available amounts; the application process, including a checklist of steps and exhibits involved in the application process; and the criteria under which selections will be made.

DATES: The actual application due date will be specified in the application kit. In no event, however, will the application be due before April 16, 1992. Furthermore, applicants will have at least 45 days to prepare to submit their proposals. The 45-day response period will begin to run from the first date upon which application kits are made available.

FOR A COPY OF THE APPLICATION KIT, CONTACT: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., room 7253, Washington, DC 20410; (202) 708-1000; (TDD) 708-2565. Requests for application kits must be in writing, but may be requested by FAX to (202) 708-3363. (These are not toll-free numbers.) The request for the Application Kit should include (1) the Reference Number FR-3189 and (2) a contact person's name, address, and telephone number.

FOR FURTHER INFORMATION CONTACT: David Sowell, Office of Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708-3484; (TDD) (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3540(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535-0084.

I. Purpose and Substantive Description

A. Authority

This competition is authorized under title I, section 107(b)(5) of the Housing and Community Development Act of 1974, as amended. Program requirements (including eligible activities) are contained in 24 CFR 570.400 and 570.402. Please note that any proposed economic development projects must meet the eligibility requirements established in these regulations.

B. Allocation and Form of Award

For this competition, HUD is making available $475,000 in Community Development Block Grant Technical Assistance program funds for a cooperative agreement with an eligible applicant. HUD anticipates funding only one application. The award is subject to the requirements of 24 CFR 570.400 and 24 CFR 570.402.

C. Background

In 1985, representatives of low-income black families, including families participating in DHA's public housing, filed the Walker case. With regard to the public housing program, they claimed that DHA and HUD had engaged in a systematic pattern of discrimination on the basis of race in the past that resulted in segregation in the public housing program. The discrimination was alleged to have taken the form of deliberate segregation on the basis of race of public housing projects, including the West Dallas project, and DHA's providing its black projects with fewer amenities and services than those projects whose tenants were white.

In order to alleviate the segregative conditions, the Court approved in 1987 a Consent Decree, in which HUD and DHA agreed, among other things, to undertake a series of specific actions to remedy specific housing, community development, and economic development conditions at the West Dallas development.[1] The Court did not make any findings with respect to HUD's conduct. The Court subsequently made a finding that there was a "long, unbroken history of deliberate segregation and discrimination in public housing by DHA *and* by the City of Dallas." *Walker* v. *HUD*, 734 F. Supp. 1289, 1290 (N.D. Tex. 1989) (emphasis in original).

When Secretary Kemp arrived at HUD, he became committed to permitting 2,000 units to remain at the West Dallas project as part of an overall revitalization of the West Dallas area. In 1990, the Urban Land Institute completed a study on the revitalization of the West Dallas area. Shortly thereafter, the City agreed in a Consent Decree with the plaintiffs that the Court should allow HUD to submit to the Court for approval a plan to retain 2,000 units at West Dallas. HUD then hired Sextant Consultants to study the best ways to address the findings of the Court and to bring about a revitalized

[1] The District Court ruled on December 14, 1991 that it would vacate the 1987 Consent Decree.

and viable West Dallas neighborhood. The plan was submitted to the Court.

In August, 1991, the City of Dallas conditionally endorsed the study done by Sextant Consultants and entitled the "Lakewest Revitalization Plan" (the Plan).[2] The Plan calls for, among other things, providing improved housing, increased economic opportunities for low-income residents, including job training to enable residents to learn job skills, obtain good jobs, complete their educations, and participate in the economic life of the community. One of the goals of the Plan is to provide employment and entrepreneurial opportunities for residents so that they may move from economic dependency to economic self-sufficiency. HUD believes this is a desirable goal and will accept and review applications for and award the technical assistance funding specified in this NOFA, whether or not the Plan is ultimately approved by the Court for implementation. Chapter 5 of the Plan will be included in the Application Kit. Complete copies of the Plan will be available at HUD's Fort Worth Regional Office.

1. Objectives

The purpose of this technical assistance competition is to solicit applications that will accomplish the following tasks:

(a) Prepare preliminary feasibility analyses and plans for up to 10 business development sites in the shopping center at the intersection of Hampton and Singleton and elsewhere in the West Dallas community, as discussed in Section 5 of the Plan for the West Dallas area. A preliminary project feasibility analysis and plan should include:

(1) A development plan for the size and type of businesses appropriate for the targeted site(s), emphasizing resident participation to the greatest extent feasible;

(2) Initial cost estimates, requirements and funding commitments for the site(s) and related security activities that should be undertaken to assure project viability;

(3) An estimate of infrastructure and parking requirements;

(4) A market analysis that establishes projected sales or rental prices for the business properties;

(5) Identification of a target market of business owners and sponsors, giving priority to resident-owned businesses where feasible;

(6) An estimate of the terms and amount of private financing that may be available for the project;

(7) A description and estimate of the additional public subsidies or private contributions required and committed to carry-out the proposed economic development project; and

(8) Projected site development start date.

The work shall result in the development of a preliminary project plan for each site for GTR review and approval.

(b) Develop and implement a Final Project Development Plan for each site. The work shall include assistance in soliciting and securing one or more private builder(s)/developer(s); processing public approvals, conducting project marketing aimed at potential business owners and operators and the financial community to obtain financing for site and business development; preparing and processing private and public funding submissions; preparing leasing agreements and negotiating lease agreements for new and existing businesses; and providing other administrative assistance needed to forge the creation and enhancement of businesses at each targeted business development site.

(c) Develop business development programs to ensure and maximize the use of resident- and minority-owned enterprises based in West Dallas in undertaking of the economic development projects resulting from this NOFA.

In meeting the requirements of this Task, the applicant will be expected to develop programs and activities aimed at resolving significant problems or issues that have prevented minority businesses from competing for procurement opportunities made available by HUD-funded public housing, CDBG and other Title I program funds, particularly in the West Dallas community; provide training and technical assistance services for creating and nurturing a variety of resident- and minority-owned businesses, particularly small and micro-businesses in the West Dallas community, to enable them to compete more effectively for local CDBG and Dallas Housing Authority contracts; work with City and Housing Authority officials to reform procurement procedures and practices to issue smaller procurements, permitting newly formed, small and micro-businesses to compete for procurements made available with HUD program funds; assist in developing and maintaining a pre-qualified list of minority contractors; develop effective communications to inform minority business of HUD funded procurement opportunities; and secure industry financial cooperation for the financing of minority business enterprises in West Dallas. The goal of this Task is to identify, refer, or assist a minimum of 200 minority firms or individual entrepreneurs for participation in construction or other programs carried out under the City of Dallas's CDBG and Title I programs, and public and assisted housing programs implemented in support of its CDBG program.

(d) Work with Private Industry Councils and other existing organizations, such as DHA and local educational institutions, to develop and implement specialized training programs for West Dallas residents. These training programs should be aimed at meeting the employment needs of businesses located and/or targeted to locate in the West Dallas community and securing industry cooperation in the hiring and counseling of residents for job opportunities made available in the West Dallas community.

(e) Establish as a result of the work under the cooperative agreement (including work with local officials, community based organizations, and residents of the West Dallas community) an organizational structure to foster a climate of economic growth and development in the West Dallas community that will continue beyond the life of this award. In addition to promoting development of the ten or more sites addressed under the required feasibility analyses and plans, it is the intent of the Department that the activities conducted under this cooperative agreement will be used as a springboard for action to identify and revitalize at a minimum an additional 20 sites for retail/commercial development in the West Dallas community.

2. Eligible Applicants

Eligible applicants are:

(a) The City of Dallas, Dallas Housing Authority, and other local government entities that have direct responsibility for economic and community development programs within the City of Dallas and/or the Dallas metropolitan area.

(b) Local non-profit organizations, fully chartered and operating under appropriate federal or state laws, that have as their principal purpose the development and implementation of economic and community development programs targeted to low-moderate income people or neighborhoods.

(c) Community-based organizations or educational institutions, including

[2] Although the Fifth Circuit vacated the City Consent Decree on September 5, 1991, the District Court ruled on December 14, 1991 that it would reinstate the City Consent Decree.

Resident Management Corporations, qualified to provide the required technical assistance.

(d) Areawide Planning Organizations operating within the Dallas metropolitan area.

3. Program Requirements

This program is funded under the technical assistance program of section 107 of title I of the Housing and Community Development Act of 1974, as amended. Therefore, to be eligible for award of the cooperative agreement, each applicant must establish a CDBG nexus between the technical assistance to be provided and the proposed economic development activities to be assisted under this NOFA. Technical assistance funds must be used for the provision of skills and knowledge to improve effectiveness in planning, developing and administering CDBG assisted activities. Technical assistance activities funded under this NOFA must be directed at economic development activities in the West Dallas community which are being, or are planned to be, funded in whole or in part with the City of Dallas's CDBG program funds.

Not later than 15 days after the deadline date for submission of applications, each applicant must:

(1) Provide proof of nexus that shall consist of a statement from the director of the CDBG agency in the City of Dallas that: (a) Identifies the type of economic development project(s) to be assisted under this grant program; (b) describes how the technical assistance will assist the community in improving the development and implementation of the proposed economic development project(s); and (c) provides an estimate of the amount of CDBG funds currently committed, or planned to be committed, to the proposed economic development activities for project implementation within the proposed grant period; and

(2) Provide proof that the applicant's organization, or an operational branch of the applicant's organization, is located in the West Dallas community or certify that, upon receipt of an award, the applicant will locate the organization or an operational branch of the organization in the West Dallas community.

4. Eligible Activities

Technical assistance activities to be conducted under this award are outlined in this NOFA. Applicants are requested to provide a more detailed Statement of Work which identifies the specific sub-tasks to be conducted to carry-out the outlined Tasks. Eligible technical assistance activities are specified in 24 CFR 570.402. Technical assistance activities eligible for funding are to provide skills and knowledge to facilitate the planning, development and administration of CDBG and Title I assisted economic development activities. For example:

- Identifying sources of capital and securing start-up and operating financing for the construction or rehabilitation of the economic development site(s) or businesses locating to the site(s);
- Training and technical assistance to businesses and individual entrepreneurs, including builder/developers and resident- and minority-owned businesses, throughout the entire development cycle and business start-up period;
- Conducting market tests or studies to determine under served business opportunities and project feasibility;
- Identifying financial intermediaries committed to economic development in low-moderate income areas and securing development capital for the candidates;
- Analyzing rules and requirements of the City of Dallas, that are disincentives to creation of economic development activities in the West Dallas community and reforming the rules and regulations to overcome obstacles;
- Coordinating economic development activities for the West Dallas community with State, local and federal agencies;
- Developing financial statement and proformas and negotiating financing and leasing terms on behalf of West Dallas builder/developers, resident-owned businesses, and minority entrepreneurs.

5. Administrative Requirements

A successful applicant will be required to adhere to four administrative requirements in performing work under this award. These requirements are:

(a) Submission of quarterly progress reports detailing progress made in fulfilling the program of tasks and sub-tasks contained in the approved project management plan;

(b) Distribution of a TA Evaluation Questionnaire to all persons, organizations or agencies receiving technical assistance services under this award;

(c) Preparation of a final report in a format suitable for information transfer, exchange and dissemination to other CDBG communities interested in economically revitalizing portions of their communities. The final report should detail the case study of the West Dallas community and provide insights and recommendations for others who may wish to develop similar programs in their communities; and

(d) Maintenance of an accounting system which is adequate to track costs under the appropriate cost principles (OMB Circular A–110 for non-profits, Part 85 for state and local governments, and the Federal Acquisition Regulation for for-profit entities).

Specific instructions regarding these administrative requirements are contained in the application kit. The form for the quarterly reports, who is expected to prepare them, the time allotted, and the method of transmitting the reports to HUD must be agreed before the cooperative agreement is executed.

II. Factors for Award

A. Ranking Factors

HUD will use the following criteria to rank applications received in response to this NOFA. The factors and maximum number of points for each factor are provided below. The total number of points is 100. HUD does not intend to use any "Policy Factors" described in 24 CFR 570.402(f)(1) in the ranking process for this competition.

1. (*20 points*) The probable effectiveness of the application in meeting the needs of the West Dallas community and accomplishing program objectives. In rating this factor HUD will consider:

(a) (10 of the 20 points) The extent to which the applicant's proposed work plan for accomplishing the tasks outlined in this NOFA provides a clear step-by-step breakdown of the major tasks and sub-tasks to be undertaken in assisting the West Dallas community.

(b) (10 of the 20 points) The extent to which the applicant demonstrates an understanding of the problems of the West Dallas community in the rationale provided for each activity to be undertaken.

2. (*47 points*) The soundness and cost-effectiveness of the proposed approach. In rating this factor HUD will consider the extent to which the applicant can demonstrate the feasibility of accomplishing each of the proposed tasks and sub-tasks proposed to be undertaken. Feasibility and cost effectiveness will be evaluated in terms of:

(a) (10 of 47 points) The past experience of the applicant in economic development financing, packaging and bringing projects of this type to fruition.

(b) (5 of 47 points) The extent to which the applicant has established working relationships with a variety of private and public financing sources located within, and licensed to do business in the City of Dallas.

(c) (5 of the 47 points) The extent to which the applicant has established working relationships with a variety of local groups and organizations (e.g., resident management entities, Chamber of Commerce, business groups and organizations, etc.) which operate in West Dallas in particular as well as the City of Dallas.

(d) (5 of 47 points) The past experience of the applicant in providing training and assistance to resident-owned businesses and minority entrepreneurs.

(e) (5 of 47 points) The past experience of the applicant in working with Private Industry Councils, local trade unions and other business organizations to provide job training and placement opportunities for low income persons.

(f) (5 of 47 points) The past experience of the applicant in overcoming administrative, regulatory or other barriers that have prohibited economic development within low-income areas.

(g) (12 of 47 points) The extent to which the applicant can demonstrate local support for project implementation as evidenced by:

(1) (4 points) A commitment, which may be in the form of cash or in-kind services, from members of a public-private partnership or other organizational structure proposed for this project.

(2) (4 points) The extent of the role of local public and private entities (other than financial commitments), especially West Dallas based entities, in project development and implementation.

(3) (4 points) The extent that Resident Management Corporations and Resident Councils from West Dallas evidence support for the applicant's proposals.

3. *(28 points)* The capacity of the applicant to carry out the proposed activities in a timely and effective fashion. In rating this factor, HUD will consider:

(a) (5 of the 28 points) The extent to which the applicant's organization and designated staff have a past history of working in a partnership arrangement with local public and private sector participants to develop and implement economic development projects in low income areas, particularly the Dallas metropolitan area.

(b) (5 of the 28 points) The extent to which the applicant's organization and staff have demonstrated experience in market analysis and development finance packaging, for low income area projects.

(c) (4 of the 28 points) The extent to which the applicant is familiar with the City of Dallas' Community Development Block Grant funded economic development programs and can apply them to accomplishing the proposed economic development program for the West Dallas community.

(d) (4 of the 28 points) The extent to which the applicant's organization and staff have demonstrated experience in coordinating resources and activities sponsored by a variety of government private sector agencies and organizations for economic development purposes.

(e) (5 of the 28 points) The extent to which the applicant's organization and staff have demonstrated successful experience in developing and operating self-help and self-sufficiency programs for residents of low-income neighborhoods.

(f) (5 of the 28 points) The extent to which the applicant demonstrates that it has realistic plans to include use of small, disadvantaged, or minority firms and individuals to conduct the work under the contract.

4. *(5 points)* The extent to which the results may be transferable or applicable to other CDBG or Title I participants. In judging this factor HUD will consider:

(a) (2 points) The extent to which the proposed technical assistance appears likely to increase the capacity of CDBG recipients within the City of Dallas, and particularly the West Dallas community, package economic development projects which benefit low-income residents.

(b) (3 points) The extent to which the proposed technical assistance will stimulate the growth and development of resident-owned and minority business enterprises in the West Dallas community.

B. Ranking Process

Applications for funding under this NOFA will be evaluated competitively and awarded points based upon the ranking factors specified in this NOFA. Subject to the following provisions, the highest ranking application will be funded.

If two or more applications have the same number of points, the application with the most points for the rating factor 1 shall be selected. If there is still a tie, the application with the most points for rating factor 3 shall be selected.

If the highest ranked applicant is a local non-profit organization, community based organization, or educational institution, HUD will notify the applicant that to qualify for selection it must submit a letter of designation within 30 days from the Chief Executive Officer of the City of Dallas certifying that "the City of Dallas is designating the *(name of applicant organization)* as a technical assistance provider to assist in carrying out the activities necessary for implementation of economic development activities in the West Dallas community." If HUD does not receive the letter by the due date, the applicant will be disqualified and the next ranked applicant will be selected under the ranking process.

III. Application Submission Process

A. Obtaining Applications

For an application kit, (Request For Cooperative Agreement Application (RFCAA)), contact the office identified in the section entitled "For a Copy of the Application Kit****" at the beginning of this NOFA.

B. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be received in the place designated for receipt by the deadline date and time specified in the application kit. An application must be received at the specified address on or before the submission deadline in the application kit or it will not be given funding consideration.

C. Checklist of Application Submission Requirements

1. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit (RFCAA). The following is a checklist of the application content that will be specified in the RFCAA.

(a) Standard Form 424 (Request For Federal Assistance) signed by the Chief Executive Officer of the entity or organization submitting the application for technical assistance funds.

(b) Budget by Task.

(c) A description of the specific tasks and sub-tasks to be undertaken, the site or sites where the activities are to take place within the West Dallas community, the proposed program participants, and rationale for the approach taken by the applicant.

(d) A Management Plan listing each major task and sub-task, a timetable for conducting each major task and sub-task which includes major milestones for completing the proposed work activities and intervals for GTR review and comment on all reports and product deliverables. The management plan should also identify staff assigned to complete each major task and sub-task.

(e) A narrative description of how the applicant meets the factors for award contained in Section II of this NOFA. The application kit will contain specific

instructions for how each factor for award should be addressed.

(f) If other funds or in-kind services are to be committed, a letter from the Chief Executive of the locality, corporation or other public or private entity providing the funds or services certifying as to the type, amount, source and timing of the matching funds or in-kind services.

(g) Letters of cooperation and commitment from any public or private organizations who will be receiving services or actively participating in this award but who may not be providing a cash or in-kind service match for program activities.

(h) Form 2880, Applicant Disclosures.

2. Certifications

Each application must contain an original and three copies of the certifications identified below. Each certification must be signed by the Chief Executive Officer of the applicant organization unless otherwise noted.

(a) Drug-free Workplace Certification.

(b) Certification regarding Lobbying pursuant to section 319 of the Department of Interior Appropriations Act of 1989, generally prohibiting use of appropriated funds for lobbying.

(c) Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to title IX, section 906 of the National Affordable Housing Act of 1990. (Applies only to applicants which are units of general local government).

(d) All assurances contained in the Application Kit.

D. Corrections to Deficit Applications

After the submission deadline, HUD will screen each application to determine whether or not it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

The 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only those items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

IV. Other Matters

A. Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3540(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535–0084.

B. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: Section 102, HUD Reform Act

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

C. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have or will be spent on lobbying activities in connection with the assistance.

D. Prohibition Against Lobbying of HUD Personnel

Section 112 of the Housing and Urban Development Reform Act of 1989 (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). Appendix A of the rule contains examples of activities covered by the rule. Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–3815 or (TDD) (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

E. Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of

applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving and applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.)

F. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

G. Federalism Executive Order

The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on states or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits participation in an effort to provide technical assistance to promote economic development in the West Dallas community of the City of Dallas, Texas, as described in the Plan submitted to the Court in the Walker case, described elsewhere in this NOFA. The NOFA does not impinge upon the relationships between the Federal Government, and state and local governments.

H. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document may have potential for significant beneficial impact on the formation, maintenance, and general well-being of the family. The technical assistance to be provided by the funding is expected to help low-income families in the West Dallas community. Since the impact upon the family is considered beneficial, through increased economic opportunities and self-sufficiency, no further review under this Order is necessary.

I. Catalog of Federal Domestic Assistance

The catalog of Federal Domestic Assistance number is 14.227.

Dated: February 21, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–4681 Filed 2–28–92; 8:45 am]

BILLING CODE 4210–29–M

federal register

Monday
March 2, 1992

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 77

Safety Standards for Refuse Piles and Waste Impoundment Dams at Surface Coal Mines and Surface Work Areas of Underground Coal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 77

RIN 1219-AA49

Safety Standards for Refuse Piles and Waste Impoundment Dams at Surface Coal Mines and Surface Work Areas of Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA) safety standards that address refuse piles and impoundment structures used at coal mines to dispose of refuse or to contain water, sediment, or slurry. These revisions address reports and certifications for refuse piles and impoundment structures, frequency of inspections of impoundments, and the method of abandoning impoundments and impounding structures. The final rule affects surface coal mines and surface areas of underground coal mines. The final rule reduces the information collection burden imposed on mine operators or other affected parties by revising reporting and recordkeeping requirements. The final rule preserves the effectiveness of the existing requirements and does not lessen the protection afforded to miners.

EFFECTIVE DATE: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 1990, MSHA published a proposed rule in the **Federal Register** (55 FR 24526) to revise reporting and recordkeeping requirements for impoundment structures and refuse piles. The proposal also addressed the frequency of inspections for impoundments, and the method of abandoning impoundments and impounding structures. The public comment period for this proposal was scheduled to close on September 21, 1990, but in response to a request from the mining community, the comment period was extended until October 19, 1990 (55 FR 39300). MSHA held a public hearing on December 13, 1990, in Pittsburgh, Pennsylvania (55 FR 48806). A transcript of the hearing was made available for public inspection. Following the hearing, MSHA allowed commenters to submit supplementary statements and data until the record closed on January 18, 1991. MSHA received written and oral statements on the proposed rule from both labor and industry. The Agency developed this final rule after a full evaluation of the entire rulemaking record.

II. Discussion of Final Rule

Impoundments are structures that are used to impound water, sediment, slurry, or any combination of these materials. Refuse piles are deposits of coal mine waste that are removed during mining operations or separated from mined coal and deposited on the surface. The failure of impoundment structures can flood and devastate downstream communities. To avoid or minimize these disasters, MSHA's existing safety standards in 30 CFR 77.214 through 77.217 address the construction and maintenance of impoundments and refuse piles.

The revisions in the final rule clarify existing paperwork requirements or provide alternative procedures for inspecting and abandoning impoundments. The final rule reduces reporting and recordkeeping burdens on the mining industry by reducing the frequency of recordkeeping and reporting requirements in appropriate instances. Reports are replaced by certifications except when actual or potential hazards conditions exist. The final rule preserves the effectiveness of the existing requirements and does not lessen the protection afforded to miners.

III. Section-by-Section Discussion

Section 77.215-2 Refuse piles; reporting requirements

Existing § 77.215-2 requires mine operators to submit certain information concerning refuse piles to MSHA's District Manager. Paragraphs (b)(4) through (b)(8) require the operator to report the following information: a topographic map; whether or not the refuse pile is burning; a description of measures taken to prevent water from being impounded or contained within the refuse pile; a diagram with cross sections of the refuse pile; and any other information pertaining to the stability of the refuse pile which may be required by the District Manager. Paragraph (c) requires this information to be reported every twelfth month once a refuse pile has been declared a hazard. There is no provision for cessation of such reports if the hazardous conditions are eliminated. Under the existing standard, the annual reporting requirement ceases only when the site is abandoned according to an approved plan.

The final rule, like the proposal, clarifies and revises § 77.215-2(c). It continues to require reports on refuse piles to be submitted to MSHA's District Manager every twelfth month once a refuse pile has been declared a hazard, but only if the refuse pile continues to present a hazard. The revision allows MSHA's District Manager to determine if a site should no longer be considered hazardous.

Several commenters were in agreement with the standard as proposed. However, one commenter stated that if a site had been considered hazardous and is still active, it is susceptible to change and could easily become hazardous and that the reporting requirement should remain in effect until the site is abandoned. This commenter objected to the District Manager determining when a site is no longer considered hazardous, stating the District Manager does not possess the expertise to make this determination and should not be given such authority.

In response to this commenter, MSHA emphasizes that all refuse piles remain active until they are properly abandoned, and while they are active they are inspected by MSHA at regular intervals. If any hazard recurs or a new hazard is found, the reporting requirements would again apply. In addition, District Managers, with the help of other MSHA personnel, regularly determine if hazardous conditions exist at coal mines. Specifically, the existing standard recognizes that the District Manager has the expertise to identify if a refuse pile can present a hazard and the authority to declare that the hazard no longer exists.

This revision will not lessen the protection afforded miners since a report will continue to be required as long as the refuse pile presents a hazard.

Section 77.215-3 Refuse piles; certification

Existing § 77.215-3(a) requires certification by a registered engineer that a hazard associated with a refuse pile has been addressed. The certification is required within 180 days following written notice by the District Manager that a refuse pile can present a hazard. The final rule, like the proposal, revises § 77.215-3(a) to allow operators to certify that a refuse pile that has been identified as hazardous is being constructed in accordance with current prudent engineering practices. The existing standard does not recognize the possibility that elimination of a hazard could take more than 180 days. The wording of the final rule recognizes that in some cases it may take more than 180

days to eliminate the hazard on a refuse pile.

As proposed, MSHA is also revising § 77.215–3(b) to require a certification every twelfth month once a refuse pile has been declared a hazard only for as long as the refuse pile presents a hazard. The existing standard does not provide a mechanism to terminate the certification requirements after the hazard has been eliminated unless the site is abandoned through an approved plan, a process that could take many years.

Several commenters agreed with the standard as proposed, while one commenter suggested retaining the existing recordkeeping requirement. This revision will not reduce the protection provided miners since the reporting requirement will remain in effect as long as the refuse pile can present a hazard. The final rule will allow the reporting requirement to be terminated when the hazard is eliminated.

Section 77.216–3 Water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements

Under existing § 77.216–3(a), impoundments and impounding structures must be inspected at intervals not exceeding 7 days for appearances of structural weakness and other hazardous conditions. All instruments must also be monitored at intervals not exceeding 7 days. As proposed, MSHA is revising existing § 77.216–3(a) to allow for inspection frequencies other than the 7 days. Under the final rule, the District Manager may approve alternative inspection frequencies based on the hazard potential of the impoundment as well as its demonstrated performance history. The final rule also includes a requirement for immediate inspection after a specified rain event approved by the District Manager.

This revision allows the District Manager some flexibility to vary the frequency of required inspections and minimizes recordkeeping requirements for impoundments that have a demonstrated record of safety and present low hazard potential. Unless the District Manager approves an alternative inspection frequency, the required inspection period for impounding structures remains every 7 days. However, when the District Manager allows an alternative inspection frequency, the final rule provides an equally safe, if not safer, alternative because a specified rain event will trigger an immediate inspection regardless of when the previous inspection occurred.

Reasons for extending the time between inspections would include both a low hazard potential for the structure and a demonstrated history of performance. The potential for extension of inspection time periods will encourage operators to install instrumentation with the knowledge that once the structure has a demonstrated record of safe performance, less frequent inspections and instrument readings would be possible. Under the existing rule, operators sometimes avoided installing instrumentation since all instrumentation is required to be monitored every 7 days.

The revised standard would also reduce the number of unnecessary inspections as well as the need for miners to travel in remote areas when it has been demonstrated that the structure has very little hazard potential. Before the impoundment standards were originally promulgated on September 9, 1975 (40 FR 41776), MSHA did not require engineering plans for impoundments at coal mines. However, since 1975 all impoundments at coal mines have been required to be constructed in accordance with engineering plans approved by MSHA. There has been general compliance with this requirement. This successful use of engineering controls makes it less important to rely so heavily on frequent inspections and gives the Agency more information with which to determine when less frequent inspection is warranted.

One commenter agreed with the proposal stating that it recognizes that each impoundment has a different level of safety that is based on design, construction, and location. Several other commenters stated that the proposed language provides a needed flexibility in determining the appropriate inspection intervals and recordkeeping requirements for impoundments. Further, these commenters stated that the only relief from the current inspection requirements has been the petition for modification procedure, which can be a time consuming and burdensome process.

Another commenter expressed concern that the condition of some impoundments can change rapidly with adverse weather conditions. In such situations, a 7 day inspection would be too infrequent. This commenter recommended that more frequent inspections be required in times of adverse weather conditions, such as rainy weather.

In response to these commenters, the final rule requires immediate inspection after a specified rain event approved by the District Manager. Such a rain event may differ for each impoundment depending on factors such as design, size, type of construction and hazard potential of the impoundment. It will also vary depending on geographical location of the impoundment and regional weather patterns. The Agency intends that the event be defined as a specific amount of rainfall over a period of time. This change will ensure a greater degree of protection to persons, while at the same time providing greater flexibility to allow longer inspection intervals for impoundments that have proven stable and are functioning as designed. It should also be noted that if a potentially hazardous condition develops at an impoundment, existing § 77.216–3(b)(4) requires the operator to examine the structure and monitor the instrumentation at least once every 8 hours, or more often, as required by an authorized representative. This provision remains unchanged.

Section 77.216–4 Water, sediment, or slurry impoundments and impounding structures; reporting requirements; certification

Under existing § 77.216–4, mine operators must submit an annual report to the District Manager describing any changes to the impoundment. The report must be certified by a registered engineer that all work was done according to an approved plan. Under the final rule, if an impoundment or impounding structure has not undergone any changes in the previous year, the mine operator only submits a certification by a registered professional engineer that there have been no changes. The final rule requires reports if the engineer's examination reveals indications of structural weakness, hazardous conditions, or other changes to the structure. This provision reduces the reporting requirements for operators whose impoundments have not changed during the reporting period. This revision would continue to provide for submission of records that allow for comparison of changing conditions and the identification of potentially unsafe situations.

One commenter expressed concern over MSHA's burden hour estimate regarding the average time required to prepare a report, suggesting that the potential time saving that could be realized is much greater than estimated. Another commenter stated and MSHA agrees that the revision would result in a more useful record and would enhance

the ability of the operators to focus on potentially unsafe situations.

One commenter opposed the proposed revision, stating that water impoundments pose a great risk to the communities in many areas. Another commenter stated that MSHA should require a yearly inspection by an engineer or a professional specialist to ensure the safety of the structure. In response to these commenters, paragraph (a)(7) requires a registered professional engineer to certify that the impoundment has undergone no changes in the previous year. This revision does not reduce the protection provided by the existing standard. Although it eliminates a reporting requirement when there are no changes to report, it maintains the requirement whenever a change occurs to the impounding structure. Paragraph (b) also requires that a report be submitted at least every 5 years for impoundments that have not been changed. This provision was not proposed but has been incorporated into the final rule. In addition, the certification provision does not affect the requirements for regular inspections under § 77.216–3.

Another commenter requested clarification of the statement "changes in the impoundment during the reporting period." This commenter questioned whether the term "changes" refers to normal sediment deposition or modification of the structure. The Agency intends that natural sediment deposition, in itself, does not constitute a reportable change unless it occurs to the extent that it affects the design performance of the structure and appurtenances. For purposes of clarification, reportable changes would include modifications to the structure during the reporting period and changes that affect the stability or operation of the impoundment.

Section 77.216–5 Water, sediment or slurry impoundments and impounding structures; abandonment

Under existing § 77.216–5, in order to abandon an impoundment, the operator must preclude the possibility of future impoundment of water. This provision prevents several functional and recreational uses for impounding structures such as water storage, flood control, farming, or maintenance of recreational lakes or ponds for fishing, boating, or swimming. As proposed, the final rule revises § 77.216–5 to allow operators to obtain MSHA approval of an impoundment abandonment plan that does not preclude the future impoundment of water. Under the revised standard, the abandonment plan still requires District Manager approval.

MSHA will allow approval of an abandonment plan without provisions to preclude the future impoundment of water only when certain requirements are met. Under paragraph (b), these requirements include certification by a registered engineer knowledgeable in dam design that the structure conforms to the design drawings and has no apparent defects, certification from the owner or prospective owner that there is a willingness and ability to assume the responsibility to operate and maintain the structure, and a requirement that the owner obtain a permit or approval for the structure from the appropriate State or Federal regulatory authority. For purposes of clarification, the term "knowledgeable," which describes the level of expertise required of the certifying engineer, has been changed from the term "familiar" in the proposed rule.

Further, since promulgation of the existing standards in 1975, other agencies have become involved in the regulation of impounding structures associated with mining. The Surface Mining Control and Reclamation Act of 1977 established the Office of Surface Mining (OSM) in the Department of Interior. OSM has promulgated extensive surface regulations that include the control of fresh water, waste, and sediment structures. The OSM regulations also reference MSHA standards for impoundments under §§ 77.216 through 77.216–3.

OSM's regulations on impoundments (30 CFR 816.49) permit the operator to have a permanent impoundment. The requirements for permanent impoundments are part of OSM's "Post-Mining Land Use Plan." As part of this plan, the operator's permit is based on the following criteria:

1. The impoundment must be adequate for its intended purpose.
2. Final grading must provide adequate safety.
3. The spillway must be designed as the regulatory authority may require.

MSHA's final rule includes a provision that would require the current or prospective owner to obtain a permit for post-mining use of impoundments from the State or Federal regulatory authority. For purposes of clarification the term "Federal" has been added to the standard to recognize that in some States a Federal agency may issue the necessary permit.

The term "prospective owner" has also been added to this section in order to address the situation where the operator may wish to leave the impoundment in place at the request of a third party who may have an interest in the continued existence of the structure. If the plan for the structure is to transfer it to a third party, the Agency needs assurance of the willingness and ability of the third party to operate and maintain the structure. The Agency intends that the responsible party be capable of operating as well as maintaining the structure, therefore the term operation has been added to the final rule. Under the safeguards provided in the final rule, the Agency believes that the flexibility to allow for post-mining uses of some impounding structures is warranted, does not reduce safety, and has a beneficial societal impact.

Several commenters agreed with the proposed standard. They stated that allowing impounding structures to remain after abandonment will provide a valuable public service in that many of these impoundments can be used for water storage, flood control, wildlife habitat, and recreation. However, one commenter disagreed with the proposed standard, stating that most water impoundments retain the water that has been used in the coal cleansing process because the water is laden with toxic chemicals which would pose a hazard to people and could not possibly sustain any form of life.

A review of the approximately 750 impounding structures inspected by MSHA at coal mines indicates that about 50 percent of these structures were designed for sediment storage or as fresh water reservoirs. In addition, MSHA finds that some benefits can be attained when impounding structures associated with coal mining are left in place. Such structures can continue to perform sediment control and other beneficial functions after the slurry input has stopped and the quality of water improves. However, MSHA anticipates that impounding structures constructed of coal mine waste or designed to impound coal mine waste will generally not receive permits to be left in place. The reason for this is that 30 CFR 816.84(b)(1), an OSM regulation, does not currently allow such structures to be permanently left in place.

MSHA anticipates that this revision will primarily apply to small, low hazard, earthen structures that do not have the potential for loss of life or substantial property damage. Through the flexibility provided in the final rule, impoundments that do not present a hazard to miners or to the public could be left intact where they will serve future societal uses.

IV. Executive Order 12291 and the Regulatory Flexibility Act

This rule will not result in major cost increases nor have an incremental effect of $100 million or more on the economy. Therefore, this rule does not fall within the criteria of a major rule and Executive Order 12291 does not require a Regulatory Impact Analysis to be prepared. MSHA estimates that compliance with this final rule will result in a cost reduction of $1,919,000.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize adverse impacts on small businesses. MSHA has determined that this final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

V. Paperwork Reduction Act

The final rule revises the existing rule and reduces the recordkeeping and reporting burden by about 64,000 hours, from 175,000 hours to 111,000 hours. Specifically, the revisions to §§ 77.215–2 and 77.215–3, which provide a mechanism to terminate the annual reporting requirement after the hazard has been eliminated, will decrease the total number of reports to be completed from 50 to 25, reducing the burden from 100 to 50 hours and resulting in a cost reduction of $1,500. It is estimated that the revision to § 77.216–3, which allows flexibility to reduce the frequency of inspections (thereby, the recordkeeping requirements) for impoundments that have a demonstrated record of safety, will decrease the total burden from about 94,000 to 31,000 hours and result in a cost reduction of $1,890,000. Finally, the revision to § 77.216–4, which requires a report only when there are indications of structural changes or hazardous conditions, will decrease the total number of reports to be completed from 750 to 300, reducing the burden from 1,500 to 600 hours and resulting in a cost reduction of $27,000.

VI. List of Subjects in 30 CFR Part 77

Mine safety and health, Refuse piles, impoundments and impounding structures.

Dated: February 24, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, subchapter O, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 77—MANDATORY SAFETY STANDARDS—SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation to 30 CFR part 77 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 77.215–2 is amended by revising paragraph (c) to read as follows:

§ 77.215–2 Refuse piles; reporting requirements.

* * * * *

(c) The information required by paragraphs (b)(4) through (b)(8) of this section shall be reported every twelfth month from the date of original submission for those refuse piles which the District Manager has determined can present a hazard until the District Manager notifies the operator that the hazard has been eliminated.

3. Section 77.215–3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 77.215–3 Refuse piles; certification.

(a) Within 180 days following written notification by the District Manager that a refuse pile can present a hazard, the person owning, operating, or controlling the refuse pile shall submit to the District Manager a certification by a registered engineer that the refuse pile is being constructed or has been modified in accordance with current, prudent engineering practices to minimize the probability of impounding water and failure of such magnitude as to endanger the lives of miners.

(b) After the initial certification required by this section and until the District Manager notifies the operator that the hazard has been eliminated, certification shall be submitted every twelfth month from the date of the initial certification.

* * * * *

4. Section 77.216–3 is amended by revising paragraph (a) to read as follows:

§ 77.216–3 Water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements.

(a) All water, sediment, or slurry impoundments that meet the requirements of § 77.216(a) shall be examined as follows:

(1) At intervals not exceeding 7 days, or as otherwise approved by the District Manager, for appearances of structural weakness and other hazardous conditions.

(2) All instruments shall be monitored at intervals not exceeding 7 days, or as otherwise approved by the District Manager.

(3) Longer inspection or monitoring intervals approved under this paragraph (a) shall be justified by the operator based on the hazard potential and performance of the impounding structure, and shall include a requirement for inspection immediately after a specified rain event approved by the District Manager.

(4) All inspections required by this paragraph (a) shall be performed by a qualified person designated by the person owning, operating, or controlling the impounding structure.

* * * * *

5. Section 77.216–4 is revised to read as follows:

§ 77.216–4 Water, sediment or slurry impoundments and impounding structures; reporting requirements; certification.

(a) Except as provided in paragraph (b) of this section, every twelfth month following the date of the initial plan approval, the person owning, operating, or controlling a water, sediment, or slurry impoundment and impounding structure that has not been abandoned in accordance with an approved plan shall submit to the District Manager a report containing the following information:

(1) Changes in the geometry of the impounding structure for the reporting period.

(2) Location and type of installed instruments and the maximum and minimum recorded readings of each instrument for the reporting period.

(3) The minimum, maximum, and present depth and elevation of the impounded water, sediment, or slurry for the reporting period.

(4) Storage capacity of the impounding structure.

(5) The volume of the impounded water, sediment, or slurry at the end of the reporting period.

(6) Any other change which may have affected the stability or operation of the impounding structure that has occurred during the reporting period.

(7) A certification by a registered professional engineer that all construction, operation, and maintenance was in accordance with the approved plan.

(b) A report is not required under this section when the operator provides the District Manager with a certification by a registered professional engineer that there have been no changes under paragraphs (a)(1) through (a)(6) of this section to the impoundment or impounding structure. However, a report containing the information set out in

paragraph (a) of this section shall be submitted to the District Manager at least every 5 years.

6. Section 77.216–5 is revised to read as follows:

§ 77.216–5 Water, sediment or slurry impoundments and impounding structures; abandonment.

(a) Prior to abandonment of any water, sediment, or slurry impoundment and impounding structure which meets the requirements of 30 CFR 77.216(a), the person owning, operating, or controlling such an impoundment and impounding structure shall submit to and obtain approval from the District Manager, a plan for abandonment based on current, prudent engineering practices. This plan shall provide for major slope stability, include a schedule for the plan's implementation and, except as provided in paragraph (b) of this section, contain provisions to preclude the probability of future impoundment of water, sediment, or slurry.

(b) An abandonment plan does not have to contain a provision to preclude the future impoundment of water if the plan is approved by the District Manager and documentation is included in the abandonment plan to ensure that the following requirements are met:

(1) A registered professional engineer, knowledgeable in the principles of dam design and in the design and construction of the structure, shall certify that it substantially conforms to the approved design plan and specifications and that there are no apparent defects.

(2) The current owner or prospective owner shall certify a willingness and ability to assume responsibility for operation and maintenance of the structure.

(3) A permit or approval for the continued existence of the impoundment or impounding structure shall be obtained from the Federal or State agency responsible for dam safety.

[FR Doc. 92–4678 Filed 2–28–92; 8:45 am]

BILLING CODE 4510–43–M

federal register

Monday
March 2, 1992

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 110

Hazardous Materials: Public Sector Training and Planning Grants; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 110

[Docket No. HM-209, Notice No. 92-3]

RIN 2137-AC09

Interagency Hazardous Materials; Public Sector Training and Planning Grants

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Research and Special Programs Administration (RSPA) is proposing a rule to implement a reimbursable grant program to enhance existing State and local hazardous materials emergency preparedness and response programs. This reimbursable grant program is required by section 117A (49 App. U.S.C. 1815) of the Hazardous Materials Transportation Act (HMTA), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). Section 117A authorizes the Department to provide assistance to States for emergency response planning and to States and Indian tribes for emergency response training. The purpose of the grant program is to: Increase State, local, and Indian tribal effectiveness in safely and efficiently handling hazardous materials accidents and incidents; enhance implementation of the Emergency Planning and Community Right To Know Act of 1986 (EPCRA); and encourage a comprehensive approach to emergency planning and training by incorporating the unique challenges of response to transportation situations. The proposed rule provides the application requirements specific to this grant program.

Where practicable, the Department proposes to rely on its general grant provisions contained in 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

DATES: Comments are due on or before May 1, 1992.

ADDRESSES: Address comments to Dockets Unit (DHM-30), Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number; five copies, if possible, should be submitted. Receipt of comments will not be confirmed unless a self-addressed stamped postcard is provided. Public dockets may be reviewed on normal business days between 8:30 a.m. and 5 p.m. in the Dockets Unit, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001. Copies of the "Hazardous Materials Transportation Uniform Safety Act of 1990" (HMTUSA), Public Law 101-615, may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371, (202) 275-2091.

FOR FURTHER INFORMATION CONTACT: Susan Bullard or Charles Rogoff, Office of Hazardous Materials Initiatives and Training, Research and Special Programs Administration (RSPA), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone: 202-366-4900.

SUPPLEMENTARY INFORMATION: This proposed regulation sets forth the application procedures for the planning and training grant program established by section 117A of the HMTA. The proposed regulation augments the requirements contained in 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

I. Background

The HMTUSA amended HMTA (49 App. U.S.C. 1801 *et seq.*) to assign new responsibilities to the Department of Transportation (DOT) and strengthen interagency coordination and technical assistance with respect to hazardous materials emergency planning and training. Within DOT, RSPA has been delegated the responsibility for overseeing the program authorized in section 117A of the HMTA.

Section 117A, "Public Sector Training and Planning," creates a program for RSPA and other Federal agencies to: Provide financial and technical assistance, national direction, and guidance to enhance State and local hazardous materials emergency planning and training; and enhance overall implementation of EPCRA. The program developed under the leadership of RSPA will increase the emphasis on transportation in ongoing efforts—improving the capability of communities to plan for and respond to the full range of potential risks they face.

The reimbursable grant program is supported by fees collected pursuant to section 117A(h) of HMTA. Section 106 of HMTA establishes a registration program of shippers and carriers of certain hazardous materials. On October 10, 1991, RSPA proposed in the Federal Register (56 FR 51294) to assess and collect from all persons who are required to be registered an annual fee to fund this reimbursable grant program.

Implementing guidance which addresses such issues as allocation criteria, measures against which grant applications will be evaluated, explanation of certifications required, and relationship of the grant program to the national curriculum is in development. This guidance will be included in an application package which will be provided to applicants following publication of the final rule.

A. Overview of the Reimbursable Grant Program

Section 117A of HMTA authorizes financial assistance to States for emergency response planning and to States and Indian tribes for training public sector employees to respond safely and efficiently to accidents and incidents involving hazardous materials, including those involving transportation. The goal of the program is to provide assistance to planners, trainers, and responders at the local level.

As proposed in § 110.30, a planning or training grant application from a State or Tribe must be accompanied by a letter from the Governor or tribal authority designating an entity to receive Federal funds and provide the required written certifications.

In support of the intent and ongoing implementation of EPCRA, RSPA is proposing to accept applications from and award grants to the State or Tribal Emergency Response Commission or an established agency which is an active participant in the Emergency Response Commission. The designated entity should have substantive knowledge of the status of planning and training under EPCRA, familiarity with State and local emergency preparedness and response capabilities and training needs, understanding of the intent and mandate of HMTUSA, and proven capability to administer a Federal grant program. In addition, the designated entity would be asked to certify that appropriate disciplines are represented in the ongoing emergency planning and training process (e.g., senior state fire official, environmental and emergency management, and transportation representatives). A statement that all members of the State or Tribal Emergency Response Commission have been given the opportunity to review the application would also be required.

1. The Planning Grant Program

Under Section 117A(a)(1) of HMTA, planning grants may be made to reimburse States for: (1) Developing,

improving, and implementing emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA); (2) determining the flow patterns of hazardous materials within a State and between a State and another State; and (3) determining the need for regional hazardous materials emergency response teams. Section 117A of HMTA builds upon and enhances the existing framework established under EPCRA.

To qualify for a planning grant, a State must: (1) Certify that it is complying with sections 301 and 303 of EPCRA; (2) certify that it will maintain a two fiscal year average of its own aggregate level of expenditures for developing, improving, and implementing emergency plans under EPCRA; and (3) agree to make at least 75 percent of the Federal funds provided available to local emergency planning committees (LEPCs) established pursuant to section 301(c) of the Emergency Planning and Community Right-To-Know Act.

Section 117A of HMTA does not authorize RSPA to provide planning grants to Indian tribes.

2. The Training Grant Program

Under Section 117A(b)(1), training grants may be made to reimburse States and Indian tribes for training public sector employees to respond safely and efficiently to accidents and incidents involving hazardous materials, including those involving transportation.

To qualify for a training grant, a State must: (1) Certify that it is complying with sections 301 and 303 of the EPCRA; (2) certify that it will maintain a two fiscal year average of its own aggregate level of expenditures for training public sector employees to respond to accidents and incidents involving hazardous materials; (3) agree to make at least 75 percent of the Federal funds provided available for the purpose of training such employees either employed or used by political subdivisions; and, (4) agree to use courses consistent with the National Curriculum developed under Section 117A(g).

To qualify for a training grant, an Indian tribe must certify that it will maintain a two fiscal year average of its own aggregate level of expenditures for training public sector employees to respond to accidents and incidents involving hazardous materials.

The HMTA defines Indian tribes by reference to the Indian Self-Determination and Education Act (25 U.S.C. 4506). The Secretary of Interior has issued regulations (25 CFR 272.2) defining "Federally-recognized" Indian tribes under that law. RSPA is proposing in this regulation to accept applications for training grants from federally-recognized Indian tribes.

B. Relationship to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA)

Section 117A enhances and strengthens ongoing efforts and relationships established under the Emergency Planning and Community Right-To-Know Act.

EPCRA: (1) Establishes authorities for emergency planning and preparedness, emergency notification, community right-to-know, and toxic chemical release reporting; and, (2) calls for the creation of an infrastructure including State emergency response commissions (SERCs), emergency planning districts and local emergency planning committees (LEPCs). These State and local emergency preparedness and response entities are traditionally relied upon to: (1) Provide a forum for coordinating information; (2) assist in understanding and communicating the associated risks of hazardous materials to the public; and (3) support State-wide and local emergency response planning efforts.

Section 117A(a)(1) of HMTA gives RSPA the opportunity to provide financial assistance to States for emergency response planning called for under EPCRA. States, in turn, are required to make at least 75 percent of the Federal funds provided available to local emergency planning committees. Section 117A(b)(3) requires that 75 percent of the Federal funds for training assistance benefit public sector employees.

A State may not receive a planning or training grant unless it certifies that it is complying with sections 301 and 303 of the EPCRA. After consulting with EPA and FEMA and taking into consideration the dynamic nature of this program, RSPA is proposing to accept self-certification of a State's progress and current status in achieving compliance.

Therefore, RSPA is proposing with respect to section 301 that an applicant certify that a SERC has been established, emergency planning districts have been designated and LEPCs have been appointed by the SERC. The applicant must describe the status of the LEPCs' emergency response plans and their compliance with EPCRA section 303. Section 117A of HMTA does not require Indian tribes to make these assurances.

C. Financial Issues

1. Pass-Through of Planning Funds to Local Emergency Planning Committees (LEPCs)

Section 117A(a)(3) of HMTA requires States to "make available not less than 75 percent of the funds granted to * * * local emergency planning committees established pursuant to section 301(c) of EPCRA by the State emergency response commission." RSPA proposes to require the States to make available 75% of the LEPCs.

2. Funding Political Subdivisions in the Training Grant Program

Section 117A(b)(3) of HMTA requires a State to "make available at least 75 percent of the funds granted * * * for the purpose of training public sector employees employed or used by the political subdivisions." HMTA does not require Indian tribes to make this assurance. Funding could be passed through to a local political subdivision. If a State elects to conduct such training itself, assurances must be provided that the training will in fact benefit public sector employees at the local level.

3. Maintenance of Effort Requirements

In order to qualify for a grant, States and Indian tribes must certify that the aggregate expenditure of funds, exclusive of Federal funds, used to support emergency response planning and training, will be maintained at a level which does not fall below the average level for the last two fiscal years.

4. Non-Federal Cost-Share Requirements

States and Indian tribes must contribute a matching share to any grant awarded. The cost-share requirement for both planning and training is set by section 117A(d) of HMTA at 20 percent. RSPA is proposing to require that States and Indian tribes satisfy the cost-sharing requirement with cash. RSPA is also considering whether to accept in-kind contributions. Comments are specifically requested on whether to accept in-kind contributions to meet the matching requirements and on types of in-kind contributions that would meet the requirements.

D. Use of Federal Funds by Recipients

Funds may be used to carry out specific activities identified in section 117A of HMTA. For planning grants, those activities are: (1) Developing, improving, and implementing emergency plans, including determination of flow patterns of hazardous materials within a State and between States; and (2)

determining the need for regional hazardous materials emergency response teams. For training grants, 75 percent of the funds must be used to benefit public sector employees to respond to incidents or accidents involving hazardous materials. Activities conducted could include training efforts designed for public officials who are not responders, but who perform activities associated with emergency response plans developed under EPCRA. Operational equipment to be used in response is excluded from consideration for funding under this grant program. RSPA welcomes comments on the activities that are eligible for funding proposed in § 110.40 of the rule.

E. Allocation of Federal Funds

The funding level for the planning portion of the grant program is set by section 117A(i) of HMTA at $5 million and for the training portion at $7.8 million per Federal fiscal year for 1993 through 1998. These funds are "no-year money" which means that RSPA does not have to make grant awards in the same year that funds become available. Therefore, there is no need to set a single deadline for the submission of grant packages. RSPA is proposing as guidance to accept grant applications on a semi-annual basis (January 1 and July 1) or the first business day thereafter.

Section 117A(b)(7) of HMTA specifies criteria RSPA is to consider for allocating training funds, which are based on need. There is no comparable provision in the law for allocating planning funds. RSPA proposes to use these criteria to the extent practicable in allocating planning funds.

RSPA is proposing to consider several factors in distributing grant funds. Some of the factors under consideration include the number of hazardous materials facilities, types and amounts of hazardous materials transported, population at risk, frequency and number of incidents recorded in past years, high mileage transportation corridors, whether the State or tribe assesses and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials, and other factors that are deemed appropriate. RSPA plans to acquire this information from other Federal agencies, industry and States.

RSPA seeks comments on the factors that it should consider in allocating grant funds.

F. Application assistance

RSPA intends to receive and review applications, and make grant awards from its Washington, DC offices. Preapplication support, including assistance from other implementing Federal agencies, will be made available as soon as the rule is made final and details will be provided at that time.

II. Role of Other Federal Agencies in the Implementation of Section 117A of HMTA

Section 117A of HMTA permits the Secretary, DOT, to seek guidance from and consult with the following Federal agencies: Environmental Protection Agency (EPA); Department of Energy (DOE); Occupational Safety and Health Administration (OSHA); the Federal Emergency Management Agency (FEMA); the Nuclear Regulatory Commission (NRC); and the National Institute of Environmental Health Sciences (NIEHS). RSPA is proposing to use representatives from these agencies and other agencies in an advisory role in reviewing and approving planning and training grant applications to: (1) Identify related training and planning programs; (2) resolve implementation and policy issues that overlap between agencies; (3) maximize the benefit of limited resources; and, (4) minimize the duplication of effort.

FEMA, in coordination with DOT, EPA, DOE, and NIEHS, will monitor public sector emergency response training and planning for accidents and incidents involving hazardous materials. Based upon the results of the monitoring, these same agencies will provide technical assistance to States, political subdivisions and Indian tribes.

This group will also assist RSPA in developing and periodically updating a curriculum called for under section 117A(g) of HMTA. Known as the National Curriculum, the guidelines and courses of study identified will provide the basis for the training grants and enable public sector employees to comply with applicable OSHA and EPA regulations related to emergency response training, as well as those non-governmental standards for training issued by the National Fire Protection Association (NFPA).

III. The Proposed Grant Mechanism and Administrative Requirements

A. General Information

The Office of Management and Budget (OMB) revised OMB Circular A-102 by establishing a government-wide "common rule" which prescribes administrative requirements for Federal assistance to States, Indian tribes, and local governments. DOT implemented the common rule through 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." RSPA is required to use the administrative requirements in all sections of 49 CFR part 18, unless there is a legislative or OMB-approved exception.

Consequently, applicants and recipients for section 117A planning and training grants must comply with 49 CFR part 18, as well as other DOT regulations that are incorporated by reference in 49 CFR part 18 pertaining to grants. These other regulations include: 49 CFR part 20, "Restrictions on Lobbying;" 49 CFR part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation;" 49 CFR part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs;" 49 CFR part 27, "Nondiscrimination on the Basis of Handicap Programs and Activities Receiving or Benefitting from Federal Financial Assistance;" 49 CFR part 29, "Governmentwide Debarment and Suspension (Non-Procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);" and 49 CFR part 90, "Audits of State and Local Governments."

Copies of the laws and regulations referenced in the proposed rule are generally available through Depository Libraries and are on file in RSPA's Dockets Unit.

B. Grant Application

Because assistance provided under this section is intended to support a six-year comprehensive planning and training program, the funds and spending authority are no-year. Therefore, RSPA is encouraging submission of applications for multi-year projects from States and Indian tribes. Alternatively, an applicant may elect to apply for a grant on an annual basis for a specific project.

RSPA seeks to create a performance-based program that builds on and supports the accomplishment of long-term goals and objectives. Under the multi-year approach, activities approved in a scope of work would be funded according to the schedule for activities authorized in the grant. The recipient would be required to provide a performance report at the completion of one phase of activity—before proceeding with the next set of activities.

C. Financial Administration

Planning and training are two parts of a comprehensive national grant program; applicants are encouraged to request funds to conduct one or both in a single application package. RSPA may award funds for both in one grant document. Since both components are funded separately by a special registration fee program, RSPA believes it has a fiduciary responsibility to obligate and account for planning and training funds separately. Therefore, RSPA is proposing separate cost accounting requirements for the grant program in § 110.70. RSPA does not believe such a proposal would impose a burden on any recipient.

D. Grants Administration

1. Procurement

The grant program as proposed does not appear to pose contracting or procurement dilemmas for the States. RSPA is proposing in § 110.80 that recipients rely on their own procurement methods unless they conflict with Federal laws and standards as defined in 49 CFR part 18.

2. Reporting

Section 110.90 proposes to require performance reports at the completion of projects for which reimbursement is being requested. Performance reports are particularly important to RSPA when a recipient has a multi-year project and may request amendments to add funds until a project is completed. RSPA is proposing that recipients report on planning and training separately consistent with the proposal to require separate cost accounting.

3. Financial status reports

RSPA is proposing that recipients supply quarterly financial status reports. A recipient may be permitted to carry unexpended obligations from one year to the next. However, the dollar amount of future grant awards or amendments may be reduced by the amount of carryover funds available. This proposal is intended to maximize the amount of money RSPA has available for the planning and training grant program as a whole. RSPA may reallocate resources if carryover spending authority is not used.

4. Exceptions to the Rule

Applicants and/or recipients may petition RSPA to waive non-statutory requirements that are not applicable to their circumstances as prescribed in § 110.120. Deviations should not be commonplace, however, and commenters are asked to advise RSPA of potential hardships during the proposed rulemaking process to help improve the rule where necessary.

IV. Rulemaking Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed regulation has been evaluated in accordance with existing regulatory policies and is considered non-major under Executive Order 12291. The proposed regulation is not considered to be significant under DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979). In accordance with the Procedures, RSPA has determined that preparation of a Regulatory Evaluation is not necessary because the costs of the proposed regulation are expected to be minimal.

B. Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal would have a positive economic impact on a number of small entities, including small units of government. The HMTA planning and training grant program represents a small but statutorily mandated gain to States and localities.

By mandating that at least 75 percent of Federal funds provided for planning be passed through the LEPCs and that at least 75 percent of Federal funds provided for training be used to support public sector employees, the grant program will provide financial assistance to cities, counties, and other political subdivisions.

C. Executive Order 12612

The proposed rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). The HMTA specifies that States may apply for grants if they meet certain statutory criteria. The rule as proposed will implement the statutory requirements at a minimum level. The Federal-State relationship will be enhanced as a result of the grant funding provided. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

D. Paperwork Reduction Act

The information to be collected as part of this rulemaking document is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The information requirements for this proposed rule are the same as those set forth for most Federal grant programs and are consistent with OMB Circular A-102. Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Transportation. All comments must reference the title for this notice.

E. Regulation Identification Number (RIN)

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

RSPA has evaluated this proposed regulation in accordance with its procedures for ensuring full consideration of the environmental impacts of DOT actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. This proposed regulation meets the criteria that establish it is a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 110

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

In 49 CFR, part 110 is proposed to be added, to read as follows:

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

Sec.

Sec.
110.120 Deviation from this part.
110.130 Disputes.

Authority: 49 App. U.S.C. 1815; 49 CFR part 1.

§ 110.1 Purpose.

This part sets forth procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes, and local communities to deal with hazardous materials emergencies, including those involving transportation. These grants will enhance the implementation of the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001).

§ 110.5 Scope.

(a) This part applies to States and Indian tribes and contains the program requirements for public sector training and planning grants to support hazardous materials emergency planning and training efforts.

(b) The requirements of this part augment the requirements contained in 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," which apply to grants issued under this part.

(c) Copies of standard forms and OMB circulars referenced in this part are available from the Research and Special Programs Administration Dockets Unit (DHM-30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590-0001. The Dockets Unit is located in Room 8421 of the NASSIF Building, 400 Seventh Street, SW.

§ 110.10 Eligibility.

This part applies to States and Indian tribes. States may apply for planning and training grants. Federally-recognized Indian tribes may apply only for training grants.

§ 110.20 Definitions.

Unless defined in this part, all terms defined in section 103 of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1802) are used in their statutory meaning and all terms defined in 49 CFR part 18 and OMB Circular A-102, with respect to administrative requirements for grants, are used as defined therein. Other terms used in this part are defined as follows:

Allowable costs means those costs that are: Eligible, reasonable, necessary, and allocable to the project permitted by the appropriate Federal cost principles, and approved in the grant.

Cost analysis means the review and evaluation of costs to determine reasonableness, allocability, and allowability.

Funding period means the period of time when Federal funds are available in a grant.

Indian country means Indian country as defined in 18 U.S.C. 1151. That section defines Indian country as all land within the limits of any reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all independent Indian communities within U.S. borders whether within the original or subsequently acquired territory thereof; all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian tribe means those tribes "Federally-recognized" by the Secretary of the Interior under 25 CFR 272.2.

Local Emergency Planning Committee (LEPC) means a committee appointed by the State Emergency Response Commission under section 301(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001(c)), that includes at a minimum, representatives from each of the following groups or organizations: Elected State and local officials; law enforcement, firefighting, civil defense, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the emergency planning requirements.

National curriculum means the curriculum required to be developed under section 117A of HMTA and necessary to train public sector emergency response and preparedness teams, enabling them to comply with performance standards as stated in section 117A(g)(4).

Political subdivision means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.)), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Project means the activities and tasks identified in a grant.

Project manager means the State or Indian tribal official designated in a grant as the program contact with the Federal government.

Project officer means the Federal official designated in a grant as the program contact with the recipient. Project officers are responsible for monitoring the project.

Project period means the length of time specified in a grant for completion of all work associated with that project.

State Emergency Response Commission (SERC) means the State Emergency Response Commission appointed by the Governor of each State and Territory under the Emergency Planning and Community Right-to-Know Act of 1986.

Statement of Work means that portion of a grant that describes the purpose and scope of activities and tasks to be carried out as part of the proposed project.

§ 110.30 Grant application.

(a) *General.* An applicant for a planning or training grant shall use only the standard application forms approved by the Office of Management and Budget (OMB) (SF-424 and SF 424A) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3502). Applicants are required to submit an original and two copies of the application package. Amendment applications must include an original and two copies of the affected pages; previously submitted pages with information that is still current do not have to be resubmitted. The application must include the following:

(1) Application for Federal Assistance for non-construction programs (SF-424) and Budget sheets (SF-424A). A single application may be used for both planning and training if the budgets for each are entered separately on all budget sheets.

(2) For States, a letter from the Governor designating the State agency that is authorized to apply for a grant and to provide the written certifications required to receive a grant.

(3) For Indian tribes, a letter from the tribal government, governing body, or tribal council to the effect that the applicant is authorized to apply for a grant and to provide the written certifications required to receive a grant.

(4) A written statement explaining whether the State or tribe assesses and collects fees on the transportation of hazardous materials and whether such assessments or fees are used solely to carry out purposes related to the transportation of hazardous materials.

(5) A statement designating a project manager and providing the name, position, address and phone number of that individual who will be responsible

for coordinating the funded activities with other agencies/organizations.

(6) A project narrative statement of the goals and objectives of the proposed project, project design and long range plans. The proposed grant project and funding periods may be one or more years.

(7) A statement of work in support of the proposed project, that describes and sets priorities for the activities and tasks to be conducted, the costs associated with each activity, the number and types of deliverables and products to be completed, and a schedule for implementation.

(8) A description of supplies and equipment needed to implement the statement of work, a justification, and a copy of the cost analysis performed for these needs to determine reasonableness, allocability, and allowability to the proposed project.

(9) *Drug-Free Workplace Certification.* The applicant must certify as specified in appendix C of 49 CFR part 29 that it will comply with the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D; 51 U.S.C. 701 *et seq.*).

(10) *Anti-Lobbying Certification.* The applicant must certify as specified in appendix A of 49 CFR part 20 that no Federal funds will be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress (Section 319 of Pub. L. 101-121, 31 U.S.C. 1352).

(11) *Debarment and Suspension Certification.* The applicant must certify as specified in subpart G of 49 CFR part 29 that it will not make an award or permit any award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

(b) *Planning.* In addition to the requirements specified in paragraph (a) of this section, eligible State applicants must include the following in their application package:

(1) A written certification indicating that the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-to-Know Act of 1986, including a brief explanation of how compliance has been achieved.

(2) A written statement specifying the aggregate expenditure of funds of the State, exclusive of Federal funds, for each of its last two fiscal years for developing, improving, and implementing emergency plans under the Emergency Planning and Community Right-to-Know Act of 1986, including an explanation specifying the sources of these funds. A written certification that the State's aggregate expenditures of funds for this purpose, exclusive of Federal funds, will not fall below the average level of its expenditures for its last two fiscal years. The applicant may not claim any of these expenditures for cost-sharing.

(3) A written statement agreeing to make at least 75 percent of the Federal funds awarded available to LEPCs and an explanation of how the applicant intends to make such funds available to them for developing, improving, or implementing emergency plans.

(4) Designation of a project manager to serve as contact for coordinating planning funds under this program.

(5) A project narrative statement of the goals and objectives of each proposed project, including the following—

(i) A background statement describing the applicant's long-term goals and objectives with respect to:

(A) The current abilities and authorities of the applicant's program for preparedness planning;

(B) The need to sustain or increase program capability;

(C) Current degree of participation in or intention to assess the need for a regional hazardous materials emergency response team; and

(D) The impact that the grant will have on the program.

(ii) A discussion of whether the applicant's program currently knows, or intends to assess transportation flow patterns of hazardous materials within the State and between that State and another State.

(iii) A schedule for implementing the proposed grant activities.

(iv) A statement describing the ways in which planning will be monitored by the recipient.

(v) A statement indicating that all members of the State Emergency Response Commission were provided the opportunity to review the grant application.

(c) *Training.* In addition to the requirements specified in paragraph (a) of this section, eligible State and Tribal applicants must include the following in their application package:

(1) For a State applicant, a written certification explaining how the State is complying with sections 301 and 303 of the Emergency Planning and Community Right-to-Know Act.

(2) A written statement specifying the aggregate expenditure of funds of the State or Indian tribe, exclusive of Federal funds, for each of its last two fiscal years for training public sector employees to respond to accidents and incidents involving hazardous materials, including an explanation specifying the sources of these funds. A written certification that the applicant's aggregate expenditure of funds for this purpose, exclusive of federal funds, will not fall below the average level of its expenditures for its last two fiscal years. The applicant may not claim any of these expenditures for cost-sharing purposes.

(3) For a State applicant, a written statement agreeing to make at least 75 percent of the Federal funds awarded available for the purpose of training public sector employees employed or used by political subdivisions. A State applicant may elect to pass all or some portion of the 75 percent on to political subdivisions for this purpose. The applicant must include a specific explanation of how it intends to accomplish either one or both of these goals.

(4) Designation of a primary point of contact for coordinating training funded under this program (e.g., fire training director, fire colleges, training centers, etc.). Identification of a single repository for copies of course materials delivered under the grant as specified in § 110.90.

(5) A project narrative statement of the long-range goals and objectives of each proposed project, including the following:

(i) A background statement describing:

(A) The current training program(s);

(B) Training audience including numbers and levels of training and accreditation program for each level or criteria required to advance to the next level;

(C) Estimated total number to be trained under this grant program;

(D) The ways in which training grants will support the decentralized delivery of training to meet the needs of individualized geographic and resource needs and time considerations of local responders. Where necessary, a statement describing how the grant program will accommodate the different training needs for rural versus urban environments; and

(E) The impact that the grant and the National Curriculum will have on the program.

(ii) A statement describing how the National Curriculum will be used or modified to train public sector employees at the local level to respond to accidents and incidents involving hazardous materials.

(iii) A statement describing the ways in which training will be monitored by the recipient, including but not limited to

random examinations, inspections, and audits of training.

(iv) A schedule for implementing the proposed training grant activities.

(v) A statement indicating that all members of the State or Tribal Emergency Response Commission were provided the opportunity to review the grant application.

§ 110.40 Activities eligible for funding.

(a) *Planning.* Eligible State applicants may receive funding for the following activities:

(1) Development, improvement, and implementation of emergency plans required under the Emergency Planning and Community Right-to-Know Act of 1986, as well as exercises which test the emergency plan. Enhancement of emergency plans to include response procedures for emergencies involving transportation of hazardous materials, including radioactive materials.

(2) An assessment to determine flow patterns of hazardous materials within a State, between a State and another State or Indian country, and development and maintenance of a system to keep such information current.

(3) An assessment of the need for regional hazardous materials emergency response teams.

(4) An assessment of local response capabilities to determine the distribution of Federal funds under the grant.

(5) Development of information materials to educate the public about the transportation of hazardous materials, including radioactive materials.

(6) Conduct of emergency response drills and exercises associated with emergency preparedness plans.

(7) Technical staff to support the planning effort. Staff funded under planning grants cannot be diverted to support other requirements of the Emergency Planning and Community Right-to-Know Act.

(8) Additional activities RSPA deems appropriate to implement the scope of work for the proposed project plan and approved in the grant.

(b) *Training.* Eligible State and Indian tribe applicants may receive funding for the following activities:

(1) An assessment to determine the number of public sector employees employed or used by a political subdivision who need training and to select courses consistent with the National Curriculum.

(2) Delivery of comprehensive preparedness and response training to public sector employees. Design and delivery of such training to meet specialized needs. Travel assistance for trainees, such as tuition, travel expenses to and from a training facility, and room and board while at the training facility, and for the trainers, if appropriate.

(3) Emergency response drills and exercises associated with training, a course of study, and emergency preparedness plans.

(4) Expenses associated with training by a person (including a department, agency, or instrumentality of a State or political subdivision thereof or an Indian tribe) and activities necessary to monitor such training including, but not limited to, random examinations, inspections, and audits of training.

(5) Staff to manage the training effort resulting in increased benefits, proficiency, and rapid deployment of local and regional responders.

(6) Additional activities RSPA deems appropriate to implement the scope of work for the proposed project and approved in the grant.

§ 110.50 Disbursement of Federal funds.

(a) The applicant may not be reimbursed for the costs of activities to be conducted under a grant prior to the award of such grant.

(b) Reimbursement may not be made for a project plan until approved in the grant award.

(c) If a recipient seeks additional funds, the amendment request will be evaluated on a needs and performance basis against the availability of funds to determine whether the amendment request is appropriate. An existing grant does not commit future Federal funding.

§ 110.60 Cost sharing for planning and training.

The recipient must provide 20 percent of the direct and indirect costs of all activities covered under the grant award with non-Federal funds. Funds used for matching purposes under any other Federal grant or cooperative agreement may not be used for matching purposes. The funds expended by a recipient to qualify for the grant may not be used for cost-sharing purposes.

§ 110.70 Financial administration.

(a) A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit the preparation of reports required by 49 CFR part 18 and this part, including the tracing of funds provided for planning to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available to LEPCs for developing, improving, and implementing emergency plans; and the tracing of funds provided for training to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available for the purposes of training public sector employees employed or used by political subdivisions.

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of Indian tribes and any subgrantees shall meet the standards of 49 CFR 18.20, including the ability to trace funds provided for training to a level of expenditure adequate to establish that at least 75 percent of the funds provided were made available for the purposes of training public sector employees employed or used by political subdivisions.

(c) To be allowable, costs must be eligible, reasonable, necessary, and allocable to the approved project in accordance with OMB Circular A–87 and included in the grant award before Federal funds may be used by the grantee. Costs incurred prior to the award of any grant are not allowable. Recipients are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501), 49 CFR part 90, and OMB Circular A–128. Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. RSPA may audit a recipient at any time.

§ 110.80 Procurement.

Recipients shall use procurement procedures and practices which reflect applicable State laws and regulations and Federal requirements as specified in 49 CFR part 18. RSPA may review a recipient's procurement procedures and practices of LEPCs, political subdivisions, subgrantees and contractors, as appropriate.

§ 110.90 Grant monitoring, reports, and records retention.

(a) *Grant monitoring.* Recipients are responsible for managing the day-to-day operations of grant, subgrant and contract-supported activities. Recipients must monitor performance of supported activities to assure compliance with applicable Federal requirements and achievement of performance goals. Monitoring must cover each program, function, activity, or task covered by the grant. Monitoring and reporting

requirements for planning and training are contained in this part; general grant reporting requirements are specified in 49 CFR 18.40.

(b) *Reports.* (1) The recipient shall submit a performance report at the completion of a project for which reimbursement is being requested or with a request to amend the grant. The final performance report is due 90 days after the expiration or termination of the grant.

(2) Recipients shall submit an original and two copies of all performance reports. Performance reports for planning and training must contain brief information on the following: a comparison of actual accomplishments to the objectives established for the performance period and the reasons for slippage.

(3) Recipients shall report developments or events that occur between the required performance reporting dates which have significant impact upon the planning and training activity such as—

(i) Problems, delays, or adverse conditions which will impair the ability to meet the objective of the grant; and

(ii) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(4) Financial reporting, except as provided in § 110.70 and 49 CFR 18.41, shall be supplied quarterly using Standard Form 270, Financial Status Report, to report the status of funds. Each recipient shall report separately on planning and training.

(c) *Records retention.* In accordance with 49 CFR 18.42, all financial and programmatic records, supporting documents, statistical records, training materials, and other documents generated under a grant shall be maintained by the recipient for three years from the date the recipient submits its last expenditure report. The recipient shall designate a repository and single-point of contact for planning and for training or both for these purposes. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

§ 110.100 Enforcement.

If a recipient fails to comply with any term of an award (whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere) an enforcement action may be taken as specified in 49 CFR 18.43. The recipient may appeal any such actions as specified in 49 CFR part 18. Costs incurred by the recipient during a suspension or after termination of an award are not allowable unless RSPA authorizes it in writing. Grant awards may be terminated in whole or in part with the consent of the recipient at an agreed upon effective date, or by the recipient upon written notification.

§ 110.110 After grant requirements.

The awarding agency will close out the award when it determines that all applicable administrative actions and all required work of the grant is complete in accordance with subpart D of 49 CFR part 18. The recipient must submit all financial, performance, and other reports required as a condition of the grant, within 90 days after the expiration or termination of the grant. This time frame may be extended by RSPA for cause.

§ 110.120 Deviation from this part.

Applicants or recipients may request a deviation from the non-statutory provisions of this part. RSPA will respond to such requests in writing. If appropriate, the decision will be included in the grant award.

§ 110.130 Disputes.

Disagreements should be resolved at the lowest level possible, beginning with the project manager and the project officer. If an agreement cannot be reached, the Administrator, RSPA, will serve as the dispute resolution official, whose decision will be final.

Issued in Washington, DC on February 26, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 92-4747 Filed 2-28-92; 8:45 am]

BILLING CODE 4910-60-M

federal register

Monday
March 2, 1992

Part VI

Environmental Protection Agency

Ethylene Bisdithiocarbamates (EBDCs); Notice of Intent to Cancel and Conclusion of Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/18D; FRL 4045-8]

Ethylene bisdithiocarbamates (EBDCs); Notice of Intent to Cancel; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination; Notice of Intent to Cancel; Notice of Intent to deny applications for registration.

SUMMARY: This Notice concludes the Special Review and risk/benefit analysis of the EBDCs and announces EPA's intent to cancel registrations and to deny applications for registration for all pesticide products containing EBDCs as an active ingredient unless the registrations/applications comply with the terms and conditions of registration set forth in this Notice. This action is based on the Agency's determination that use of the EBDCs without such modified terms and conditions will result in unreasonable adverse effects to humans or the environment. In summary, EPA is announcing its intent to cancel any EBDC product registration bearing one or more of the following food uses of EBDCs: apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans, and turnips. In addition, EPA is announcing its intent to cancel EBDC products registered for other uses unless certain label modifications are made.

DATES: Requests for a hearing by a registrant, applicant, or other adversely affected party must be received on or before April 1, 1992 or, for a registrant or applicant, within 30 days from the receipt of this Notice, whichever occurs later.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Additional information supporting this action is available for public inspection at the EBDC docket (docket number "OPP-30000/18D") from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in the: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Kathleen Martin, Special Review Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office Location and Telephone Number: 3rd Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. Telephone: (703) 308-8024.

SUPPLEMENTARY INFORMATION: This Notice announces EPA's intent to cancel all registrations and deny applications for registration of pesticide products containing ethylene bisdithiocarbamates (EBDCs) as the active ingredient (a.i.) unless the registrants amend their registrations to comply with the terms and conditions set forth in this Notice. This Notice concludes EPA's administrative Special Review of the risks and benefits of the EBDCs which was initiated in a **Federal Register** notice of July 17, 1987 (52 FR 27172). A Notice of Preliminary Determination (PD 2/3) concerning the EBDCs was published in the **Federal Register** on December 20, 1989 (54 FR 52158), and supporting documents including the Technical Support Document for the PD 2/3 were made available to any requesting party at that time. EPA has evaluated the issues raised in the preliminary documents listed above in the light of comments and additional data received during the Special Review process. In summary, EPA is requiring that registrants amend their registrations to delete certain food uses from their labels. For certain retained uses, EPA is requiring that use patterns be amended. The Agency is also requiring that labels be amended to require protective clothing for industrial and agricultural workers. Furthermore, a label hazard warning statement is being required on homegarden-use labels as well as clothing and hygiene language.

This Notice is organized into nine units. Unit I is an introduction providing background information on the EBDCs, EPA actions prior to this Notice, and the legal basis for these actions. Summarized in Unit II is the toxicological data base for the EBDCs. Units III and IV present EPA's assessment of dietary and occupational/homegardener exposure to the EBDCs and their respective risks. Summarized in Unit V is the final benefits assessment on the EBDCs. Comments received from interested parties on specific risk and benefit issues are presented with EPA's response in the appropriate units (II through V). Unit VI includes the comments of the Scientific Advisory Panel and the Secretary of Agriculture on the regulatory actions previously proposed by EPA in its preliminary determination concerning the EBDCs issued December 20, 1989, and EPA's response to those comments. Additionally, the Agency presented certain scientific issues regarding the EBDCs to the SAP in September 1991. The SAP's comments and the Agency's response are included. Described in Unit VII is EPA's risk/benefit assessment and final determination regarding the EBDCs and the actions required by this Notice. Unit VIII provides the procedures for implementing the actions required by this Notice, as well as the procedures for requesting a hearing. Unit IX lists references used in concluding this Special Review of the EBDCs.

I. Introduction

The ethylene bisdithiocarbamates (the EBDCs) are a group of fungicides consisting of mancozeb, maneb, metiram, and nabam. All registrations for a fifth EBDC, zineb, have been cancelled, and therefore, zineb was not considered in this Final Determination. These pesticides are intended for use to protect a wide variety of fruit and vegetable crops against fungal pathogens. The EBDCs also have several non-food agricultural uses including ornamental plants, turf, and soil treatment. Industrially, certain EBDC products are registered for use as antimicrobials in water cooling systems (towers and airwashers), oil well drilling rigs, and in pulp, paper, and sugar mills.

The technical materials are produced by Atochem North America (maneb); BASF Corporation (metiram); Rohm and Haas Company (nabam and mancozeb); and E.I. DuPont de Nemours Company Inc. (mancozeb). These producers/registrants of EBDCs formed the EBDC/ETU Task Force to generate data to support the continued registration of selected uses of the EBDCs.

In the United States, usage of the EBDCs is estimated at about 8 to 12 million pounds of active ingredient (a.i.) per year. The predominant use is on apples, cucurbits (i.e., cucumbers, melons, and squash), lettuce, onions, potatoes, small grains, sweet corn, and tomatoes. The pesticide products containing EBDCs are most commonly formulated as wettable powders, flowables, dry flowables, dusts, and emulsifiable concentrates.

In December 1989, EPA proposed to cancel 45 of the 55 registered food uses of the EBDCs. At the same time, the Agency also encouraged the regulated community and especially grower groups to become more involved in the Special Review process by providing information to the Agency on the benefits of EBDCs, risk reduction measures, and actual use practices.

A number of grower organizations responded to EPA's call for data by providing significant benefits and risk reduction information. Most of the provided benefits information was incorporated into the EBDC benefits assessment. Because of the growers' involvement in the Special Review for the EBDCs, the Agency was able to identify certain benefits that may have otherwise been overlooked. For example, EPA was not aware of the limitations posed by the alternative fungicide registered for use on papaya.

EPA appreciates the growers' efforts to supply residue data under a short time-frame. Most of the residue data submitted by the grower groups were used by the Agency as supplemental information in the exposure assessment, except for the International Apple Institute (IAI) and Hawaiian Papaya Growers data which were used as primary sources of data. Even though submitted residue data were generally not used as the primary source in estimating residues due to their limitations, they were still valuable to the Agency. Food and Drug Administration monitoring data were important in corroborating market basket data. Further, certain grower groups submitted handling and use practice information (e.g., washing and processing studies) that the Agency was able to use in estimating reduction of residues upon processing.

Grower groups that provided information include: the American Dehydrated Onion and Garlic Association, EAK AG INC., California Tomato Growers Association, Florida Farm Bureau Federation, Florida Fresh Fruit and Vegetable Association, Florida Tomato Industry Association, Hawaii Banana Industry Association, Hawaii Papaya Industry Association, International Apple Institute, International Banana Association, Michigan Farm Bureau, Midwest Food Processors Association (MWFPA), National Cotton Council, National Food Processors Association, National Potato Council, New England Fruit Growers' Council on the Environment, Northeastern Apple Growers, Northeast Fruit Growers, Northwest Food Processors Association, Pioneer Hi-Bred International, South Bay Growers, and Southern Frozen Foods, as well as numerous individual growers (Refs. 1 through 6).

The specific benefits and residue data provided by grower groups are detailed in the relevant sections of Units III (Dietary Exposure and Risk) and Unit V (Summary of Benefits Assessment).

A. Regulatory History

1. *Rebuttable Presumption Against Registration.* In 1977, the Agency initiated a Rebuttable Presumption Against Registration (RPAR) and Continued Registration of Pesticide Products Containing EBDCs. This action initiated what is now called the Special Review process. The need for a Special Review of the EBDCs was based on evidence suggesting that the EBDCs and ethylenethiourea (ETU), a common contaminant, metabolite, and degradation product of these pesticides, posed three potential risks to humans and/or the environment: carcinogenicity, developmental toxicity, and acute toxicity to aquatic organisms. Three additional areas of concern were identified as thyroid toxicity, mutagenicity, and skin sensitization.

In 1982, the Agency concluded this Special Review by issuing a Final Determination (PD 4) which required risk reduction measures to prevent unreasonable adverse effects pending development of additional data needed to better assess the risks. The Agency concluded that the potential risk of acute toxicity to aquatic organisms could be reduced through the addition of a label statement warning users of hazards to fish and that potential risks of developmental and thyroid effects to applicators could be adequately reduced by requiring protective clothing. Potentially high dietary exposure resulting from consumption of EBDC-treated home-grown produce was addressed by a label statement highlighting preharvest intervals on labels of home-use products. The Agency also concluded that there were insufficient exposure data to reach any regulatory conclusions regarding the potential risk of carcinogenic effects to humans. Additional data were required to be submitted to address mutagenic effects. The skin sensitization effect was determined not to meet the criteria for an RPAR.

All registrations of products containing zineb (a fifth EBDC) were voluntarily cancelled in 1991. Amobam (a sixth EBDC) was voluntarily cancelled several years ago.

2. *Initiation of Special Review (PD 1).* On July 17, 1987, EPA issued a second Notice of Initiation of Special Review (52 FR 27172) of the EBDC pesticides because of concerns over carcinogenic, developmental, and thyroid effects caused by ETU. The Agency had determined that the registrations containing the EBDC pesticides met or exceeded the risk criteria in 40 CFR 154.7(a)(2) and 154.7(a)(6) relating to carcinogenicity to humans from dietary exposure and a risk to mixer/loader/applicators for carcinogenic, developmental, and thyroid effects. Specifically, EPA determined that exposure to the EBDCs resulted in an increased incidence of thyroid follicular cell adenomas and adenocarcinomas in rats, and liver tumors in two strains of mice. The Notice invited comments from the registrants as well as from the public.

In March 1989, Rohm and Haas, the sole registrant of nabam, requested voluntary cancellation of all agricultural uses. The uses of nabam in sugar mill grinding, crusher, and diffuser systems were retained.

The Agency issued a Data Call-In (DCI) for the EBDCs under FIFRA section 3(c)(2)(B) on March 10, 1989, (Ref. 7) to obtain data to better estimate the risks and benefits involved in the use of these pesticides. The data required by the Notice included residue monitoring data, tank-mix stability data, dermal exposure data, dermal absorption data, reentry data, and benefits data.

On September 6, 1989, the 4 technical registrants of mancozeb, maneb, and metiram (Rohm and Haas, DuPont, Atochem, and BASF) requested that the Agency amend their registrations to delete 42 of the 55 registered food uses and to restrict formulation of their technical products only into products labeled for the retained uses. These amendments were approved on December 4, 1989 (54 FR 50020). The 13 uses to remain on affected EBDC labels were: almonds, asparagus, bananas, caprifigs, cranberries, grapes, onions, peanuts, potatoes, sugar beets, sweet corn, tomatoes, and wheat. Specific crops permitted on labels for the individual EBDCs were: maneb (almonds, bananas, potatoes, sugar beets, sweet corn); mancozeb (asparagus, bananas, cranberries, figs, grapes, onions, peanuts, potatoes, sugar beets, sweet corn, tomatoes, wheat); and metiram (potatoes).

3. *Notice of Preliminary Determination (PD 2/3).* EPA issued a Notice of Preliminary Determination on December 20, 1989 (54 FR 52158), announcing its proposed decision to cancel the 42 uses deleted by the technical registrants on the basis of unacceptable risk and a lack of support by the registrants. The registrants' deletion of 42 of 55 food uses from their registrations decreased the estimated carcinogenic dietary risk of EBDCs from 3×10^{-4} to 2×10^{-5}. The estimated cumulative benefit of EBDC use on the 13 remaining crops was $14 to $27 million. EPA considered the estimated

dietary risk following the registrants' action and concluded that the aggregate long-term risk was still unreasonable. Therefore, EPA proposed to cancel the use of mancozeb, maneb, and metiram on 3 additional crops (bananas, potatoes, and tomatoes) and retain only the use of mancozeb and maneb on 10 of the 13 crops (almonds, asparagus, caprifigs, cranberries, grapes, onions, peanuts, sugar beets, sweet corn, and wheat). The estimated carcinogenic dietary risk resulting from the 10 retained crops was 3×10^{-6} and estimated benefits were $13 to $26 million.

In the PD 2/3, the Agency proposed a label language requirement that agricultural workers applying EBDC pesticides wear coveralls over a long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks, and goggles or a face shield. Additionally, the proposed label would require agricultural workers to wear a chemical-resistant apron during mixing and loading. For agricultural workers applying EBDCs in completely enclosed cabs with positive pressure filtration, or aerially with an enclosed cockpit, a long-sleeved shirt and long pants were proposed to be allowed to be worn in place of the protective clothing described above. Chemical-resistant gloves were to be available in the cab or cockpit and worn upon exiting. During aerial application, human flaggers were to be prohibited unless in totally enclosed vehicles. With incorporation of the above-mentioned protective clothing requirements, developmental and thyroid Margins-of-Exposure (MOEs) for workers using EBDC products on most agricultural sites increased to greater than 100 except for the use of maneb on grapes and ornamentals. EPA proposed to cancel these two maneb uses after determining that the estimated risks of continued use exceeded the estimated benefits.

The Agency also proposed a label language requirement establishing an interim reentry interval of 24–hours for all EBDC products used on agricultural sites because of concern about EBDC and ETU exposure to workers reentering treated fields for the purposes of hand harvesting, pruning, and weeding.

For homeowners, the Agency proposed a label language requirement that homeowners applying EBDC pesticides wear a long-sleeved shirt, long pants, and rubber gloves. The Agency did not believe that additional protective clothing requirements for homeowners beyond that proposed would be an effective means of reducing risks because the Agency believes that homeowners will not go to the expense of purchasing or wearing protective clothing. Therefore, EPA proposed to cancel the use of maneb on turf by homeowners where MOEs remained under 100 even with a long-sleeved shirt, long pants, and gloves and estimated risks of continued use outweighed the estimated benefits. In addition, the Agency proposed to cancel homeowner use of mancozeb on fruit trees and turf, and homeowner use of maneb on vegetables, ornamentals, fruit trees, and turf because of concerns about cancer risks which exceeded 10^{-6} for homeowners applying EBDCs.

Finally, the Agency proposed a label language requirement that all industrial workers applying EBDC pesticides wear coveralls over a long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks, and goggles or a face shield. However, even assuming incorporation of these protective clothing requirements, the MOEs for thyroid effects for nabam used in paper mills and sugar mills remained below 100. Therefore, after determining that the risks outweighed the benefits of use, the Agency proposed cancellation of the use of nabam in paper mills and sugar mills.

4. *Conclusion of Special Review (PD 4).* EPA's assessment and final decision regarding the risks and benefits associated with products containing the EBDCs are set forth in this document. The Agency has received additional data and comments in response to the EPA's EBDC Preliminary Determination.

Based on information received in response to the PD 2/3, the Agency has determined that the dietary risks exceed the benefits for the following food uses of EBDCs: apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans, and turnips. Accordingly, EPA is announcing its intent to cancel all mancozeb, maneb, and metiram products registered for one or more of those 11 uses. Additionally, EPA intends to cancel products registered for certain other agricultural uses unless their registrations and labels are amended to reflect the changes in use patterns specified herein. For workers, protective clothing measures are required to avoid cancellation. Also, a 24–hour interim reentry interval will be established. The Agency also intends to cancel all mancozeb products registered for use on homegarden fruit trees and turf. Clothing and hygiene language will be required on homegarden-use labels and registrations. A more detailed discussion is included in the appropriate Units of this document along with EPA's responses to comments received.

B. Legal Background

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Agency [FIFRA sections 3(a) and 12(a)(1)]. A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions.

To obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," (FIFRA section 3(c)(5)). The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may issue a Notice of Intent to Cancel the registration of a pesticide product whenever it appears to the Administrator that the pesticide product causes unreasonable adverse effects on the environment. The Agency created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review may be initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154. The Agency announces that a Special Review is initiated by issuing a notice in the **Federal Register**. Registrants and other interested persons are invited to review the data upon which the Special Review is based and to submit data and information to rebut the Agency's conclusions by showing that the Agency's initial determination

was in error, or by showing that use of the pesticide is not likely to result in any significant risk to human health or the environment. In addition to submitting rebuttal evidence, commenters may submit relevant information to aid in the determination of whether or not the economic, social, and environmental benefits of the use of the pesticide outweigh the risks of use. After reviewing the comments received and other relevant material obtained during the Special Review process, the Agency makes a decision on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of the Agency's risk/benefit assessment. If the Agency concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged. If, however, all risk concerns are not rebutted, the Agency will proceed to a full risk/benefit assessment. In determining whether or not the use of a pesticide poses risks which are greater than its benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registration. Alternatively, the Agency may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If the Agency makes such a determination, it may seek cancellation, and if necessary, suspension. In either case, the Agency must issue a Notice of Intent to Cancel the registrations. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified changes set forth in the Notice, if possible. Adversely affected persons, including registrants and applicants for registration, may also request a hearing on the cancellation of a specified registration and use, and if they do so in a legally effective manner, that registration and use will be continued pending a decision at the close of an administrative hearing.

II. Summary of Toxicological Concerns and Agency Evaluation of Comments and Additional Data

The Special Review of the EBDCs was initiated in 1987 because of carcinogenic, developmental, and thyroid effects caused by ethylenethiourea (ETU). Summarized in this Unit are the Agency's review of studies for these effects including discussions of new information and public comments that have been received since the Notice of Preliminary Determination (PD 2/3) was issued in December 1989.

A. Carcinogenicity

1. *Hazard identification.* In the PD 2/3, the Agency relied on data from four studies in its carcinogenic risk assessment of ETU. In one study (Ref. 8), marked increases in liver tumors (hepatomas) were observed in mice fed 646 parts per million (ppm) of ETU daily for 80 weeks. The thyroids in this study were not examined. Another study (Ref. 8) showed that rats fed two different doses of ETU (175 or 350 ppm) daily for 18 months developed thyroid carcinomas at both dose levels. No thyroid tumors developed in controls. In a third study (Ref. 8), thyroid effects were observed in rats fed ETU at doses of 5, 25, 125, 250, or 500 ppm for nearly 2 years. A dose-related increase in thyroid follicular cell carcinomas and adenocarcinomas was observed at 250 and 500 ppm; thyroid follicular cell adenomas at 250 ppm; and thyroid follicular cell hyperplasia at 5, 25, 125, and 250 ppm.

At the time the PD 2/3 was issued, the National Toxicology Program (NTP) made available to the Agency a fourth study (Ref. 8) that included data from ETU carcinogenicity studies conducted with rats and mice. The NTP studies were of an unusually complex design when compared with the usual NTP carcinogenicity bioassay where the dosing of animals is started only after weaning. In the ETU bioassay, some groups of animals were exposed to ETU in utero and fed ETU after weaning throughout their lifetime. In the mouse study, for example, the doses for the parent animals were 0, 33, 110, and 330 ppm, and the lifetime doses for the test animals after weaning were 0, 100, 330, and 1,000 ppm. However, because the data for animals exposed in utero were still under review, the Agency limited its analysis in the PD 2/3 dose response assessment to those animal groups which were exposed in the standard fashion (i.e., were not exposed in utero or through milk but were put on the ETU-containing diets only after weaning).

In the NTP mouse study using the standard treatment groups, animals were fed doses of 0, 333, or 1,000 ppm ETU in the diet for up to 2 years. In the female mice treated at the low dose, 30 percent of the animals exhibited liver adenomas only, while an additional 58 percent showed liver carcinomas for a combined total of 88 percent showing adenomas or carcinomas. At the high dose, only 2 percent exhibited adenomas while 96 percent were diagnosed with carcinomas. This contrasts sharply with a total of only 8 percent of the females in the control group exhibiting either adenomas (4 percent) or carcinomas (4 percent).

The thyroid gland in female mice showed dose-related increases in follicular cell hyperplasia when compared to controls (4 percent, 26 percent, and 94 percent, respectively). Male mice showed follicular cell hyperplasia only at the high dose tested (0 percent, 0 percent, and 88 percent, respectively). Female mice showed statistically-significant increases in follicular cell multiple adenomas and carcinomas at the high dose only. No thyroid carcinomas or adenomas were observed in controls. In males, follicular cell adenomas and carcinomas appeared to a greater extent in the high dose group total (62 percent) than in controls (2 percent) or the low dose group (2 percent).

In the NTP bioassay conducted on rats, the thyroid gland was the principal target organ for ETU. Animals were fed ETU in their diet at levels of 0, 83, or 250 ppm for up to 2 years. Hyperplasia ranged between 0 and 9 percent for control groups, whereas hyperplasia in all treated groups was between 18 and 64 percent. Follicular cell adenocarcinomas occurred in 58 percent of the high dose group of males compared to 2 percent in controls. In females, it was 16 percent for adenocarcinomas at the high dose compared with 4 percent for controls.

The potency factor (Q_1^*) used in the PD 2/3, 0.6 $(mg/kg/day)^{-1}$, was based on female mouse liver tumors observed in the NTP study on ETU. Although NTP data on the rat thyroid were also available to the Agency to estimate a revised Q_1^*, the mouse data were chosen because they provided a slightly more conservative Q_1^* than that estimated for the male rat thyroid. Also, there was no developed plausible mechanistic information to suggest a mode of action for liver tumors in the mouse as there was for thyroid tumors in the rat (See Unit II.A.4. for further discussion).

2. *Potency factor (Q_1^*) issues—a. EBDC/ETU Task Force analysis.* In December 1990 and April 1991, the EBDC/ETU Task Force submitted to EPA an analysis of the female mouse liver data from the NTP study (OPP 30000/53: D–12412A and D–12639A). This analysis had been conducted by

three independent statisticians. Their analysis argued that the preliminary cancer potency factor (Q_1^*) of 0.6 (mg/kg/day)$^{-1}$ should be reduced. The approach used in reaching this conclusion differed from the Agency's in three ways:

(1) Actual body weight and food consumption data from the NTP study were used by the Task Force (instead of standard conversion values derived empirically) in converting the estimated potency per ppm in food to an estimated potency per mg/kg/day, thereby reducing the potency factor by about 20 percent.

(2) Female mouse tumor response data for pre-weaning dose groups receiving the same post-weaning dose were combined or pooled by the Task Force (i.e., liver tumor responses were summed/pooled), because there were no statistically-significant differences between mice exposed in utero and the standard dose groups. However, as a result of the inclusion of the low 33/100 ppm dose group (i.e., pre-weaning dose/post-weaning dose) from the in utero exposure group as a data point, the high dose group (1,000 ppm) was omitted by the Task Force from the linearized multistage model used to calculate the Q_1^*. This was done because the Task Force suggested it allowed for a better definition of the shape of the dose-response curve in the lower dose region, which is of primary interest for quantitative risk assessment purposes. This reduces the Q_1^* estimate by about 4.5 fold.

(3) An interspecies scaling factor was based upon the ratio of human to animal body weights raised to the ¼ power rather than the ⅓ power currently used by the Agency. This recommendation was motivated by the work of Travis and White (1988) and O'Flaherty (1989) as well as by indications that certain Federal Government agencies are considering changing from ⅓ power to ¼ power. This reduces the Q_1^* by a factor of about two.

The consequence of some or all of these changes would make the preliminary Q_1^* used in the PD 2/3, based on female mouse liver tumors, lower than the Q_1^* based upon the male rat thyroid tumors.

b. *HED Peer Review*. On May 29, 1991, the Agency's Office of Pesticide Program's, Health Effects Division Carcinogenicity Peer Review Committee met to discuss these Q_1^* issues (Ref. 9). The Committee concluded the following:

(1) The Q_1^* value should be estimated with the initial inclusion of all four dose groups (i.e., 0, 100, 330, 1,000 ppm).

(2) The experimental dose of 33/100 ppm for the female mouse liver should be included as a data point in estimating the Q_1^*. Also, the liver tumor response in female mice receiving their first exposure as adults after 8 weeks of age should be combined (pooled) with those female mice receiving their initial exposure in utero which then continued uninterrupted throughout the remainder of their life-span.

(3) The interspecies scaling factor based upon the ratio of human to animal body weights raised to the ⅓ power should be employed. This is consistent with Agency policy.

(4) The best fit of the data to the linearized multistage model (with the possible elimination of the high dose) to obtain the best estimate of risk at the low dose should determine the Q_1^*.

(5) Actual body weight and food consumption data should be used.

c. *Inclusion of the low dose.* The most significant deliberation within the HED Peer Review Committee focused on the inclusion of the 33/100 ppm low dose group and the exclusion of the 1,000 ppm dose group for the purpose of dose response assessment. The inclusion of the 33/100 ppm dose was accepted by the Peer Review Committee; however, there were strong arguments for excluding the 33/100 ppm dose from the Q_1^* determination. The arguments for including the data point were based primarily on biological considerations, thereby allowing the lowest dose treatment group to provide a better estimate and extrapolation to the events occurring at low dose exposures. The arguments for not including this data point were based primarily on statistical incongruities of the experimental design (small sample size and the absence of any corresponding control group). Due to strong arguments against including this data point, the Agency requested comments from the FIFRA Scientific Advisory Panel (SAP) relative to the Peer Review Committee's recommendations for appropriate use of this dose group for risk characterization. Specifically, the second gathering of the SAP (convened on September 18, 1991) was asked to provide, to the extent possible, the scientific arguments for either inclusion or exclusion of the low dose data point in the dose-response assessment.

In an October 2, 1991 report, the SAP stated that adequate data should always be included unless there is a strong reason to exclude them. The Panel felt strongly that the data from the 33/100 ppm group should be included in the analyses. The SAP's argument for inclusion was that the Agency's standard dose-response formula (e.g., linearized multistage model) is probably not statistically appropriate for use in calculating the Q_1^* if all data except the control show over 90 percent rates of cancer incidence. The Panel also believed that, in this case, there is a strong reason for the Agency's standard approach to exclude the highest dose group because its inclusion is associated with gross distortion of estimates of the probable effects at lower doses when used in the linearized multistage model. The Panel's complete response can be found in Unit VI of this Notice.

d. *Q_1^* for the final determination.* As a result of the HED Peer Review Committee decisions and the recommendations of the SAP, the revised Q_1^* for the Final Determination of the EBDCs/ETU reflects inclusion of the low dose group and is estimated to be 0.11 (mg/kg/day)$^{-1}$ (Ref. 10).

3. *Mutagenicity.* ETU and the EBDCs have been tested for mutagenicity in several assay systems (Ref. 8). It is well recognized that a correlation exists between genotoxic agents and carcinogenicity; many, but not all, mutagenic agents contribute to or induce tumor formation. Although the results of available studies were both positive and negative, the body of evidence suggests that ETU and the EBDCs are capable of inducing a variety of genotoxic endpoints. These include responses in gene mutation assays, structural chromosomal assays, and other genotoxic effects. ETU does not appear to be a highly potent genotoxic agent; however, the positive mutagenicity findings generally support the carcinogenic observations of ETU in both rats and mice.

4. *Non-genotoxic tumor formation (Threshold Concept).* There is experimental evidence that thyroid tumors in rats can only occur as a result of exceeding a threshold (i.e., tumors appear only when hormone concentrations exceed a specific level, identified as the threshold, for an extended period of time). To fully understand the threshold concept, it is necessary to provide a brief explanation of the physiological relationship between the pituitary gland and thyroid gland. Decreased levels of thyroid hormones threaten the physiological equilibrium which causes the anterior pituitary gland to secrete thyroid stimulating hormone (TSH). In turn, the TSH causes thyroid hormone levels to rise back to normal levels. The anterior pituitary then decreases production of TSH which causes a subsequent decrease in the production of thyroid hormone. If there is a disruption of this feedback mechanism resulting in decreased thyroid hormone levels that cannot be counterbalanced by increased

TSH production, the result is the continuous but futile stimulation of the thyroid by TSH. This constant stimulation by TSH over an extended period of time changes the morphology of the thyroid gland and, at some critical point, results in tumor formation (i.e., follicular cell neoplasia). This would result in a mechanism for tumor formation involving a threshold. It is unclear, though, how the "weak" genotoxicity of ETU may play a role in this process.

Iodide peroxidase is an enzyme that is essential in the production of thyroid hormones. ETU is structurally related to several chemicals that inhibit the production of iodide peroxidase and has been demonstrated to inhibit iodide peroxidase *in vitro*. ETU would be expected to have the same effect on the thyroid gland *in vivo*. Thus, ETU may interfere with the biosynthesis of thyroid hormones by inhibiting iodide peroxidase which results in the positive feedback to the pituitary (described above) for as long as ETU is sufficiently available to maintain decreased thyroid hormone levels. It has been argued, therefore, that unless dose levels of ETU are at high enough levels to sufficiently inhibit iodide peroxidase for an extended period of time, causing the appropriate hormone levels to exceed a specific concentration (i.e., the threshold), ETU should not cause thyroid tumors. In other words, the dose of ETU below the threshold will be too low to cause this exaggerated positive feedback.

EPA presented the threshold concept to the Agency's FIFRA Scientific Advisory Panel on May 15, 1990. In general, the Panel believes that there is a reasonable basis to postulate a mode and mechanism of action for the thyroid tumor effects but was unable to provide a plausible explanation for the formation of liver tumors as a result of elevated levels of TSH or decreased circulating levels of thyroid hormones. The Panel's complete response can be found in Unit VI of this document.

5. *Weight-of-evidence for carcinogenicity.* EPA classified ETU as a Group B_2 Carcinogen by using a weight-of-the-evidence approach and following the classification scheme set forth in EPA's Carcinogenic Risk Assessment Guidelines (51 FR 33992). In general terms, a B_2 classification means that the weight-of-evidence from laboratory animal data is sufficient to consider the compound a probable human carcinogen. Evidence is sufficient if there is an increased incidence of tumors: (a) In multiple species or strains of test animals; or (b) in multiple experiments, for example, with different dose levels or routes of administration; or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age at onset.

ETU's B2 classification is based on evidence that:

(1) ETU induced an increased incidence of thyroid follicular cell adenomas and adenocarcinomas in mice and 2 strains of rats (3 separate studies) and an increased incidence of liver adenomas and carcinomas in 3 strains of mice.

(2) ETU induced thyroid tumors in rats after 1 year or less of treatment.

(3) ETU induced a high incidence of both thyroid tumors in rats and hepatomas in mice to an unusual degree in a single experiment.

(4) ETU is structurally similar to several other thyroid inhibitors (e.g., thiouracil and thiourea) that have been found to induce liver and/or thyroid tumors in rodents.

(5) Results of the available mutagenicity studies on ETU also provide supportive evidence of the carcinogenic effect.

B. Developmental Effects

The no-observable-adverse-effect level (NOAEL) for developmental toxicity resulting from exposure to ETU is equal to or less than 5.0 mg/kg/day based on a rat study (Ref. 8). Although a no-observable-effect level (NOEL) was not established in the rat study, the Agency believes the NOAEL is close to the NOEL and could be used for the purpose of estimating Margins-of-Exposure (MOEs). ETU was shown to be developmentally toxic at dose levels lower than those that produced no apparent maternal toxicity. At 5.0 mg/kg/day, which was the lowest dose tested, developmental toxicity was observed in the form of delayed ossification or hardening of the parietal bone (in the skull). Delayed ossification was clearly dose-related and at higher rates than in controls and appears to be a sensitive indicator of exposure to ETU. ETU has also been detected in term fetuses at concentrations comparable to those found in maternal tissues following oral treatment and it could therefore not be determined whether or not the malformations arose as a result of direct action on the fetus or indirectly by altering maternal thyroid or other functions. The results of the NTP study conducted on rats and mice indicated that ETU affected thyroid function in both species. However, a mouse study showed no developmental toxicity at very high doses (800 mg/kg/day by gavage). Therefore, simple inhibition of the thyroid gland may not necessarily be the mechanism by which developmental effects are manifested in rats. Preliminary evidence in the literature indicates developmental effects in rabbits.

C. Thyroid Effects

ETU has been shown to cause thyroid effects from subchronic exposures. A 90–day study on rats revealed a NOEL of 5 ppm (0.25 mg/kg/day) (Ref. 8). Thyroid toxicity seen at levels above 5 ppm consisted of thyroid hyperplasia, decreased uptake of radioactive iodine by the thyroid, and decreased serum levels of triiodothyronine (T3) and tetraiodothyronine (T4). This 90–day rat study also indicated a lowest-effect level (LEL) of 25 ppm (1.25 mg/kg/day). A 3,000–fold uncertainty factor was applied to the LEL to derive the reference dose which is 0.00008 mg/kg/body weight/day. The uncertainty factor of 3,000 accounts for inter/intraspecies extrapolation (x 100), the lack of a NOEL (x 10), and data gaps (x 3).

D. Other Effects

Although ecological effects are not a subject of this Special Review, the Agency is concerned about these effects as well as the potential for the EBDCs to contaminate groundwater.

1. *Ecological effects.* In the PD 2/3, EPA stated that additional data would be needed to more fully assess the potential of EBDCs to cause reproductive effects in birds and chronic and acute toxicity in aquatic organisms. The Agency has reviewed the data that were submitted after publication of the Registration Standards for mancozeb, maneb, metiram, and nabam. Summaries of new findings for each chemical are as follows (Ref. 11):

(a) Repeated applications of mancozeb on apples and potatoes may pose a reproductive risk to birds.

(b) Repeated applications of maneb on apples and cranberries may pose a reproductive risk to birds. Freshwater fish are at approximately five times greater acute risk than originally thought based on new data; freshwater fish may also be at chronic risk from repeat applications; estuarine invertebrates are the most sensitive of all aquatic species.

(c) For nabam industrial uses, estuarine invertebrates are more at risk than previously noted.

(d) Repeated applications of metiram on apples may pose reproductive risk to birds.

The following data requirements remain outstanding: aquatic toxicity and avian reproduction studies for mancozeb (currently in review), maneb

(due 7/92 and 11/92), and metiram (due 4/92 and 12/92). Additional environmental fate data are also required to fully address the ecological concerns. However, the limited environmental fate data base indicates that the EBDCs rapidly degrade to ETU. This rapid degradation mitigates potential concern for the parent EBDC. Further testing requirements for ETU may be required depending on the results of the review of environmental fate studies required by the Registration Standards.

2. *Groundwater.* The Agency required retrospective groundwater monitoring studies for each of the EBDC parent compounds in 1988 through Data Call-In Notices and Registration Standards. These Data Call-In Notices were issued in response to environmental fate data submitted by EBDC registrants in response to the 1984 Data Call-In Notice which indicated that ETU has the potential to leach to groundwater. The registrant for metiram submitted a protocol for the small-scale retrospective groundwater monitoring study in 1990. This protocol was rejected by the Agency because it was too general and lacked detailed information such as the criteria and procedures for the selection of the test sites, well locations, analytical methods and limits of detections for the parent compound and ETU, and quality assurance/control programs. As of this date, no groundwater monitoring for ETU or the EBDC compounds has begun.

The National Pesticide Survey (NPS), started by EPA in 1985, was the first study to analyze for pesticides and nitrates in drinking water wells on a national level. The survey reported a detection of ETU in one well (16 ppb at a 4.5 ppb limit of detection) out of 739 rural domestic wells. ETU was not detected in any of the 556 community water systems tested. Statistically, 0.1 percent of rural domestic wells (or 8,470 rural domestic wells in the United States) would be expected to be contaminated with ETU. To date, the Agency has not established a Maximum Contaminant Level (MCL) or a Health Advisory (HA) for ETU.

E. Comments and Response

A number of comments were received in response to the PD 2/3 regarding the toxicity of the EBDC pesticides (Ref 12). A summary of those comments and the Agency's responses follow.

1. *Comment.* One commenter states that there are currently no valid studies which evaluate the effects of EBDCs on humans. While animal studies provide a basis for assuming cancer response in humans, there are significant differences to question the validity of those test results. In particular, the breakdown product of EBDCs, ethylenethiourea (ETU), does not produce the same result on thyroid function in man as it does in a rat. The test results show ETU to be a problem only at doses higher than EPA's estimate of human exposure. The commenter states that it is unreasonable and unfair to extrapolate these doses to assume a significant health risk to humans.

Response. The Agency also is not aware of any valid human epidemiological studies that evaluate the effects of any of the EBDCs or ETU. However, there are grounds to believe that the EBDCs and/or ETU may cause the same cancerous and non-cancerous effects in humans as it does in other mammals by one or more mechanisms. First, EBDCs or ETU may directly act upon the DNA molecule causing a mutation with the subsequent event of carcinogenicity. This cause and effect relationship can be independent of the dose level administered. Second, ETU may also cause an imbalance in thyroid hormone levels which ultimately changes the thyroid gland morphology (follicular cell neoplasia).

2. *Comment.* Another commenter contends that the EBDCs may not be human carcinogens, based upon the article written by Ames and Gold (Science Vol. 249, 31 August 1990) which states that chemicals tested at the maximum tolerated dose (MTD) induce cell division which then plays a dominant role in carcinogenesis. Thus, Ames and Gold conclude that at the MTD a rodent carcinogen provides no information about low-dose risk to man.

Response. The EBDCs and ETU have been tested in cancer bioassays at lower doses than the MTD in more than one species and several experiments with positive results. In the case of EBDCs/ETU, neither the specific mechanism nor the sequence of events which allow for the manifestation of carcinogenesis are known. As stated in the **Federal Register** (50 FR 10372), EPA's policy is that "in the absence of adequate data on humans, it is reasonable to regard chemicals that are carcinogenic in laboratory animals as if they were also carcinogenic to humans***as a general principle."

3. *Comment.* A commenter has called for positive proof that this family of fungicides and/or its metabolite, ETU, cause cancer in humans.

Response. The Agency is not aware of any valid human epidemiological studies that evaluate effects from ETU or any of the EBDCs. However, the Agency has data on some of the chemicals that show that under certain test conditions carcinogenic effects are manifested. Because EBDCs and ETU have been shown to cause cancer in other mammals, it is reasonable to assume that these chemicals have the potential to cause similar effects in humans. As noted in the previous response, it is EPA policy to utilize animal data to identify potential carcinogenic risks to humans. The Agency does not believe it would be appropriate public policy to ignore such data and wait for positive evidence of human harm before taking any action. The degree of confidence in a chemical's ability or potential to cause cancer in humans, in the absence of human studies, is based primarily upon animal studies and how well the conduct of these studies follow established scientific principles and guidelines. This is the basis for the weight-of-evidence approach that enables the Agency to take the position that these chemicals are probable human carcinogens in the absence of valid human epidemiological studies.

4. *Comment.* A commenter stated that the risk assessment does not include the risk from nitrosated ETU, which may form in the human stomach and has been demonstrated to induce potent genotoxic effects.

Response. The acidity of the rodent stomach is comparable to the acidity of the human stomach, with other gastric constituents being generally comparable. Because of this similarity, one can reasonably assume that whatever chemical reaction occurs in the rodent stomach might also occur in the human stomach. Assuming the nitrosation of the ETU occurs in the rat stomach and results in a tumorigenic effect, this would have already been considered in the determination and selection of the data used to calculate a Q_1^* and subsequent risk analysis.

5. *Comment.* A commenter submitted a research publication which presented data on the mechanism of thyroid peroxidase inhibition by ETU.

Response. The published article presents *in vitro* experimental evidence on a mechanism of action for the inhibition of thyroid peroxidase by ETU and puts forth the argument that the findings provide a biochemical basis for the existence of a no-observable-effect level (NOEL), thereby establishing a threshold level for thyroid carcinogenesis. Even if one assumed that a NOEL existed, it does not necessarily follow that the establishment of a NOEL automatically precludes a genotoxic mechanism for thyroid carcinogenicity. Extensive mutagenicity tests conducted on the

EBDCs/ETU have been interpreted as either weakly positive, equivocal, or negative. Although the article is supportive of a threshold phenomenon, data have not been submitted to the Agency that directly address the carcinogenicity issue of the thyroid by ETU *in vivo*.

6. *Comment.* One commenter indicated that studies have shown cancer and birth defects occurring in rats exposed to massive doses of EBDCs but not occurring in mice, rabbits, and hamsters exposed to the same doses.

Response. ETU, the common metabolite of all the EBDCs, has been shown to produce thyroid tumors in rats and mice and liver tumors in mice. The Agency is not aware of carcinogenicity studies being conducted on rabbits. The studies conducted on hamsters were not scientifically acceptable.

ETU is a teratogen in rats and hamsters although in hamsters at much higher doses than in rats. It does not appear to be teratogenic in mice. Preliminary evidence in the literature indicates developmental effects in rabbits.

Nabam has been shown to produce developmental effects in rabbits at very low dose levels and there is some suggestive, but currently incomplete data, that it also produces developmental defects in rats.

The fact that a chemical can produce a similar type of effect between species or sexes without regard to dose is not biologically unusual. The type and site of the response can be explained by the chemical agent's pharmacokinetics and pharmacodynamics between species. One may assume that a particular response observed in one species has the potential of appearing in one or more additional species in the same or related form if the pharmacokinetics and pharmacodynamics of the agent is altered and the sensitivities between species differ.

III. Dietary Exposure and Risk

A. Dietary Exposure

In the EBDC Preliminary Determination (PD 2/3), the Agency estimated the chronic dietary risk using field trial residue data that reflected use of EBDCs at maximum application rates, minimum preharvest intervals, and at least the typical number of applications. Also considered were commercial processing data for mancozeb, maneb, and metiram in addition to washing, cooking, and other processing studies that were available at that time. For all 55 crops, the total cancer risk from dietary exposure to EBDC-treated crops was estimated to be 3×10^{-4}.

In the PD 2/3, EPA stated its belief that if more representative data were available (i.e., studies that would allow the Agency to estimate average residue levels closer to the dinner plate rather than the farm gate), the dietary risk estimates could be significantly lower and that the Agency might conclude that the risks could possibly be outweighed by the benefits for more crops than the 10 proposed to be retained. On March 10, 1989, the Agency required the EBDC registrants to generate market basket data for representative crops which could then be translated to other similar crops (Ref. 7). Generally, residue data from a particular crop may be translated to other crops within the same crop group (Ref. 19).

The EBDC/ETU Task Force sampled, at randomly selected grocery stores across the United States, various food forms (e.g., raw, canned, frozen, juice) of 12 representative crops: almonds, apples, bananas, broccoli, cucumbers, dry beans, grapes, head lettuce, onions, potatoes, sweet corn, and tomatoes. Also, meat and milk were sampled. The EBDC/ETU Task Force chose not to sample five of the representative crops (carrots, leaf lettuce, peaches, spinach, and succulent beans). Carrots would have been translatable to sugar beets and turnip roots; leaf lettuce to celery, endive, fennel, and rhubarb; peaches to apricots and nectarines; and spinach to collards, kale, mustard greens, and turnip greens. The field trial residue data cited in the PD 2/3 are used in this Final Determination as the basis for residue estimates for these commodities for which market basket data are unavailable.

In September 1990, the EBDC/ETU Task Force submitted market basket data for 8 of the 12 crops: broccoli, cucumbers, dry beans, head lettuce, onions, potatoes, sweet corn, tomatoes, meat, and milk (Ref. 13). In total, 5,784 samples had been taken and analyzed for EBDC and ETU and only 1 sample was reported to have EBDC or ETU residues greater than 1 ppm; most EBDC tolerances are 7 ppm. The average residue levels in samples taken at the grocery stores were significantly lower than the average residue levels previously reported in field trials (i.e., at the farm gate) (Refs. 14 through 18).

For the Final Determination residue estimates, broccoli market basket data were translated to brussels sprouts, cabbage, cauliflower, and kohlrabi; cucumber data were translated to cantaloupe, casaba melons, crenshaw melons, honeydew melons, pumpkin, squash, and watermelon; dry bean market basket data were translated to cotton and peanuts; sweet corn data to barley, field corn, oats, rye, and wheat; and tomatoes were translated to eggplant and peppers.

Market basket data had also been generated for four other sites: almonds, apples, bananas, and grapes. However, due to problems encountered with the Craven Laboratories testing, those data were not used in the dietary exposure estimates. As an alternative, the EBDC/ETU Task Force generated limited monitoring data for bananas (Ref. 20), grape juice (Ref. 21), and wine (Ref. 22); also, some additional residue field trial data were provided for fresh grapes (Ref. 23). For apples, the Task Force submitted residue field trial data developed in cooperation with the International Apple Institute (IAI) in support of a new, more restrictive use pattern (Refs. 1 through 3). For almonds, the Task Force agreed that the Agency should use the PD 2/3 field trial data. Existing field trial data were also used for cranberry and papaya, which were to be supported by the market basket data for grapes and apples, respectively. The available apple residue data were translated to crabapple/quince and pears. The grape juice data were translated to cranberry juice.

Other data considered in refining the PD 2/3 residue estimates for the PD 4 include updated percent-crop treated information, which were obtained in part from the National Agricultural Pesticide Impact Assessment Program (NAPIAP) report (Ref. 24), processing data, and residue information provided by the following studies: FDA and state monitoring data; Florida Special Processing Study (celery, lettuce, pepper, and tomatoes); Hawaii Banana Study; the Hawaiian Papaya Growers' papaya transportation and storage study; Head Lettuce monitoring (wrapped and unwrapped); International Apple Institute apple study; leafy green studies; Midwest Food Processors' residue/processing study; the National Food Processors Association database of member's monitoring results; New England Fruit Growers' residue study in apples from typical uses; and the Northwest Food Processors Association potato data (Refs. 4, 5, and 25 through 32).

B. Carcinogenic Risk

Using the revised residue estimates (which incorporated commercial processing factors, washing and peeling factors, cooking factors, etc.), updated percent-crop treated information, and the revised upper-bound cancer potency factor (Q_1^*), EPA now estimates that the upper-bound lifetime carcinogenic risk for the United States population from

dietary exposure to EBDCs from all 56 crops is 1.8×10^{-5} compared to the PD 2/3 estimate of 3×10^{-4} (Refs. 33 through 35); it appears that there are 56 uses of EBDCs because dry and succulent beans were listed as 1 site in the PD 2/3 and now they are listed as 2 sites. These risk estimates were derived using the Dietary Risk Evaluation System (DRES), the Agency's computerized data base containing food consumption patterns. The DRES can provide dietary exposure and risk estimates for the U.S. population and 22 subgroups of the U.S. population. Two of the most highly exposed subpopulations include non-nursing infants less than 1 year old and children age 1 to 6 years. Estimated carcinogenic risks to infants and children are discussed in Unit VII.A.

Listed in the following Table 1 are the PD 2/3 and PD 4 carcinogenic risk estimates to the overall U.S. population for each of the 56 commodities. The estimates of carcinogenic risk cited in this Notice are upper-bound estimates at the 95 percent confidence level, meaning that there is a 95 percent probability that the true risks do not exceed the estimates, and may be lower. The Agency's Guidelines point out that the use of upper-bound risk estimates is generally appropriate, but that the lower bound of risk may be as low as zero. The Guidelines state: "An established procedure does not yet exist for making 'most likely' or 'best' estimates of risk within the range of uncertainty defined by the upper and lower limit estimates." Thus, upper bound estimates are a prudent approach to risk estimation which may overstate risks, but it is designed to avoid understating them.

TABLE 1.—SUMMARY OF UPPER-BOUND LIFETIME CARCINOGENIC RISK, PERCENT RfD OCCUPIED, AND BENEFITS ESTIMATES.

Crop	PD 2/3 Risk Estimates	PD 4 Risk Estimates	PD 4 Percent RfD Range Occupied	PD 4 Benefits Range	Cost-Effectiveness
Uses to be Retained					
Almonds	7.3×10^{-9}	1.3×10^{-9} (FT)[5]	<1	Not Identified	Not Identified
Apples	1.0×10^{-4}	3.3×10^{-7} (FT)	3	$16,700,000–$51,800,000	$19,100,000–$59,200,000
Asparagus	2.4×10^{-9}	3.1×10^{-9} (FT)	<1	Not Identified	Not Identified
Bananas	1.2×10^{-6}	6.6×10^{-8} (MN)	1	$2,000,000–$5,000,000	$8,700,000–$21,600,000
Barley	3.3×10^{-7}	2.2×10^{-10} (MT)	<1	$330,000–$1,900,000	$420,000,000–$2,400,000,000
Dry Beans[1]	2.5×10^{-5}	1.3×10^{-8} (M)	<1	$500,000–$1,600,000	$28,000,000–$89,600,000
Beans, Lima[2]	2.4×10^{-6}			$500,000	Not Available
Broccoli	1.3×10^{-5}	2.4×10^{-8} (M)	<1	Negligible	Not Available
Brussels Sprouts	3.8×10^{-7}	3.3×10^{-9} (MT)	<1	Negligible	Not Available
Cabbage	1.2×10^{-6}	5.3×10^{-8} (MT)	1	Negligible	Not Available
Cantaloupes[3]	3.4×10^{-7}	8.7×10^{-9} (MT)	<1	$980,000–$4,900,000	$24,300,000
Casaba melons	5.7×10^{-9}	See Cantaloupes		See Cantaloupes	See Cantaloupes
Cauliflower	2.7×10^{-7}	1.1×10^{-8} (MT)	<1	Negligible	Not Available
Corn, field	7.2×10^{-8}	1.3×10^{-9} (MT)	<1	$1,000,000–$1,500,000	$215,400,000–$323,000,000
Corn, sweet and pop	2.7×10^{-7}	2.9×10^{-8} (M)	<1	$2,100,000–$8,600,000	$21,200,000–$86,600,000
Cotton	6.4×10^{-8}	2.2×10^{-10} (MT)	<1	$27,200,000	$34,600,000,000
Crabapples/Quince	6.1×10^{-7}	4.4×10^{-10} (FT)	<1	Not Identified	Not Identified
Cranberries	5.2×10^{-7}	4.9×10^{-9} (FT)	<1	$70,000	$49,000,000
Crenshaw melons	1.0×10^{-10}	See Cantaloupes		See Cantaloupes	See Cantaloupes
Cucumbers	9.2×10^{-7}	3.4×10^{-8} (M)	<1	$1,400,000–$6,100,000	$12,400,000–$54,000,000
Eggplant	2.5×10^{-8}	2.1×10^{-9} (MT)	<1	Not Identified	Not Identified
Endive	3.2×10^{-9}	3.1×10^{-9} (FT)	<1	Not Identified	Not Identified
Fennel	9.6×10^{-10}	4.4×10^{-10} (FT)	<1	Not Identified	Not Identified
Figs:					
Caprifigs	Non-Food Use	Non-Food Use		Non-Food Use	Non-Food Use
Kadota[4]	1.5×10^{-9}	$<1.0 \times 10^{-10}$	<1	Not Identified	Not Identified
Grapes	9.0×10^{-7}	7.2×10^{-8} (MN)	1	$1,800,000–$17,500,000	$72,000,000–$700,000,000
Honeydews	1.4×10^{-7}	See Cantaloupes		See Cantaloupes	See Cantaloupes
Kale	7.1×10^{-7}	1.0×10^{-7} (FT)	1	$2,100,000–$5,040,000	$5,880,000–$14,100,000
Kohlrabi	1.3×10^{-8}	1.1×10^{-10} (MT)	<1	Not Identified	Not Identified
Lettuce:	3.0×10^{-9}				
Head		2.4×10^{-8} (M)	<1	$34,800,000–$177,500,000.	$406,000,000–$2,071,000,000
Leaf		1.4×10^{-7} (FT)	2	$5,200,000–$26,500,000	$10,400,000–$53,000,000
Oats	5.8×10^{-8}	3.3×10^{-10} (M)	<1	$3,800,000–$25,000,000	$3,200,000,000–$21,200,000,000
Onions	4.7×10^{-7}	2.6×10^{-8} (M)	<1	$4,200,000–$5,500,000	$50,300,000–$65,800,000
Papayas	1.8×10^{-7}	2.5×10^{-8} (FT)	<1	$240,000–$7,860,000	$1,300,000–$44,000,000
Peanuts	1.6×10^{-8}	1.9×10^{-9} (MT)	<1	$9,100,000	-$2,500,000,000
Pears	1.5×10^{-6}	1.7×10^{-8} (FT)	<1	$300,000	$5,600,000
Pecans	4.0×10^{-10}	$<1.0 \times 10^{-10}$ (FT)	<1	Not Identified	Not Identified
Peppers	3.4×10^{-8}	9.2×10^{-9} (MT)	<1	$80,000,000–$85,000,000	$2,400,000,000–$2,600,000,000
Pineapples	$<1.0 \times 10^{-10}$	Seed-Piece Treatment		Not Identified	Not Identified
Potatoes	1.7×10^{-8}	2.1×10^{-7} (M)	2	$40,400,000	$55,500,000
Pumpkins	1.1×10^{-8}	4.4×10^{-10} (MT)	<1	$139,000–$706,000	$144,100,000–$732,100,000
Rye	3.5×10^{-9}	$<1.0 \times 10^{-10}$ (MT)	<1	$10,000–$60,000	$28,000,000–$168,000,000
Squash	3.4×10^{-7}	2.2×10^{-8} (MT)	<1	$271,000–$810,000	$4,400,000–$13,100,000
Sugar beets	3.7×10^{-7}	3.9×10^{-8} (FT)	<1	Not Identified	Not Identified
Tomatoes	1.6×10^{-5}	2.7×10^{-7} (M)	3	$32,300,000–$45,000,000	$129,200,000–$180,000,000
Watermelons	1.9×10^{-9}	1.1×10^{-8} (MT)	<1	See Cantaloupes	See Cantaloupes

TABLE 1.—SUMMARY OF UPPER-BOUND LIFETIME CARCINOGENIC RISK, PERCENT RfD OCCUPIED, AND BENEFITS ESTIMATES.—Continued

Crop	PD 2/3 Risk Estimates	PD 4 Risk Estimates	PD 4 Percent RfD Range Occupied	PD 4 Benefits Range	Cost-Effectiveness
Wheat	1.1×10^{-7}	1.9×10^{-9} (MT)	<1	$1,663,000–$10,000,000	$245,100,000–$1,500,000,000
Meat (red)	1.8×10^{-7}	1.9×10^{-9} (M)	<1		
Milk (national)	5.6×10^{-7}	2.0×10^{-8} (M)	<1		
Subtotal		1.6×10^{-6}	approx . 47	$268,000,000–$564,950,000.	
Uses to be Cancelled					
Apricots	6.7×10^{-5}	4.7×10^{-7} (FT)	5	Not Identified	Not Identified
Celery	1.8×10^{-5}	8.7×10^{-7} (F)	10	$1,300,000–$3,400,000	$700,000–$1,800,000
Carrots	1.9×10^{-5}	3.9×10^{-7} (FT)	4	$1,200,000	$871,000
Collards	1.3×10^{-5}	1.3×10^{-6} (FT)	14	$5,700,000–$13,680,000	$1,200,000–$2,900,000
Mustard greens	1.7×10^{-5}	2.1×10^{-6} (FT)	24	$4,050,000–$9,720,000	$540,000–$1,300,000
Nectarines	1.0×10^{-5}	7.7×10^{-8} (FT)	1	$10,000	$36,000
Peaches	4.2×10^{-5}	2.6×10^{-6} (FT)	30	$10,000	$1,000
Rhubarb	6.5×10^{-7}	2.8×10^{-7} (FT)	3	Not Identified	Not Identified
Spinach	1.5×10^{-5}	2.1×10^{-6} (FT)	24	$5,000,000–$27,500,000	$667,000–$3,670,000
Succulent Beans[1]		3.7×10^{-6} (FT)	42	$1,300,000–$1,400,000	$99,000–$106,000
Turnips	1.7×10^{-5}	2.1×10^{-6} (FT)	24	$3,150,000–$7,560,000	$420,000–$1,000,000
Total	3.0×10^{-4}	1.8×10^{-5}	approx . 228	$290,300,000–$629,400,000.	

[1]PD 2/3 Risk Estimate includes both dry and succulent beans.
[2]Lima beans are a subset of dry beans and succulent beans (i.e., there are both dry lima beans and succulent lima beans). In the PD 4, a risk estimate for lima beans was Not identified. Rather, beans were classified as dry or succulent.
[3]PD 4 risk and percent-RfD estimates include cantaloupes, casaba, crenshaw, and honeydew; the benefits estimate and cost-effectiveness coefficients include cantaloupe, casaba, crenshaw, honeydew, and watermelons.
[4]In September 1989, the EBDC technical registrants voluntarily cancelled the fig food-use (i.e., kadota figs), leaving caprifigs as a registered use. In the PD 2/3, kadota figs were inadvertently omitted from the dietary risk analysis.
[5]Key: The type of data used in estimating dietary exposure are indicated in parentheses. FT = field trial data; M = market basket data; MT = market basket data translated; and MN = limited monitoring data. See Unit III for a more detailed description of the data.

The type of data used in estimating exposure are indicated in parentheses. "FT" means that the residue estimate is based on field trial data which result from use of the EBDC at maximum application rates, minimum preharvest intervals, and at least the typical number of applications that are typically applied as long as they are within the number of applications allowed on the label. "M" means that the residue estimate is derived from the market basket data which were generated by the EBDC/ETU Task Force. "MT" indicates that the residue estimate was translated from the market basket data. Finally, "MN" means that the residue data were derived from the limited monitoring data which were submitted to the Agency in lieu of banana and grape market basket data.

C. Developmental Toxicity

In the PD 2/3, developmental risk from dietary exposure to ETU was estimated by comparison of maximum exposure estimates for each EBDC to the developmental no-observable-adverse-effect level (NOAEL) (see Unit II). The estimated average margins-of-exposure (MOE) ranged from 770 for maneb to 4,985 for mancozeb; these are considered adequate. For this Final Determination, the dietary exposure estimates decreased; thus, the MOEs would increase. Therefore, the developmental toxicity risk analysis was not repeated.

D. Thyroid Effects

Thyroid effects are assessed using the ETU reference dose (RfD) which was derived from a 90–day rat study; see Unit II.C. for a description of this study. The ETU RfD is compared to the anticipated residues (which are obtained through DRES) to estimate the percent of RfD occupied (i.e., % RfD) for each of the 56 crops.

EPA estimated the percent RfD occupied for the overall U.S. population, the infants subgroup, and the children subgroup. The percent RfD occupied estimates for the infants and children subgroups are discussed in Unit VII.A. The percent RfD occupied estimates for the overall U.S. population are listed in Table 1 in Unit III.B. of this Notice.

E. Comments and Response: General (Refs. 6 and 36)

1. *Comment.* One commenter questioned the Agency's proposal to cancel EBDC use on potatoes while retaining use on grapes and onions. The commenter stated that it appears inconsistent to cancel a root crop like potatoes where there is no direct spraying of the edible portion (and no translocation of the EBDCs into the plant or tubers) and to retain grapes, where there is direct spraying of the fruit. Further, the commenter believes that potatoes, like onions, are unlikely to contain significant EBDC/ETU residues due to the undergrqund development of edible portions and likely washing, peeling, and time in storage.

Response. The proposed cancellation of potatoes was based on a risk/benefit balancing that demonstrated a relatively high estimated risk for potatoes compared to relatively low estimated benefits. When estimating risks from each individual commodity, EPA is concerned with the risk due to ETU, the common degradate of the EBDCs which is carcinogenic. ETU (unlike EBDCs) is transported through the crop and can be measured in all plant parts including potato tubers. There is also the potential for EBDC transfer to the potato tubers from the soil during harvest. The EBDC/ETU residue estimates incorporate available washing, peeling, and other processing information. Finally, even though the ETU residue estimate may be relatively small, the resultant risk estimate for a commodity such as potatoes can be significant because the consumption estimate is relatively high.

2. *Comment.* Several commenters stated that unrealistic assumptions were used by EPA in the exposure estimates and that dietary exposure should be reassessed using realistic estimates of both EBDCs and ETU. Examples of what the commenters suggested were unrealistic assumptions include: using residue data from produce sampled at the farm gate to estimate residues in consumed produce; and for non-detectable residues, assuming that all EBDC-treated crops contain residues equal to the limit of detection. The commenters suggested that more realistic estimates would be based on produce for sale in the marketplace, not on produce as it is taken directly from the plant in the field. The commenter further stated that better data are needed to estimate ETU residues and points out that EPA admits that the current data overstate the dietary risk to consumers.

Response. The Agency acknowledged in the PD 2/3 that the field trial data (reflecting residue levels at the farm gate) were likely to overstate the residue levels in produce as consumed. However, these field trial data (which were corrected for washing, peeling, cooking, and other processing factors) were the best data available at the time of the PD 2/3 for dietary exposure assessment. Because the Agency expected that the available data would overstate the residues in food as consumed, EPA required the EBDC registrants to provide market basket data (i.e., data on foods collected in grocery stores). For this Final Determination, the Agency estimated dietary exposure from the market basket data that were submitted including additional processing factors, as appropriate.

EPA did not assume that all crops treated with EBDCs contain residues equal to the limit-of-detection. For the PD 2/3, the Agency assumed that all non-detectable residue levels were present at one-fourth the limit-of-quantitation (LOQ). EPA believed that this was a reasonable assumption because environmental data, which include pesticide residues, are usually distributed log-normally. A log-normal distribution is one in which the logarithms of the residue estimates are distributed according to the familiar bell-shaped curve. The average of a log-normal distribution is about one-fourth the maximum value. In the PD 4, EPA assumed that non-detectable residues were present at one-half the LOQ. The Agency changed its assumption because one-half of the LOQ, which is based on the assumption that residues are normally distributed, is more commonly used throughout the scientific community and within EPA for other chemicals. Also, one-half LOQ is a more conservative assumption.

Finally, ETU residues are not the only concern with the EBDC fungicides. While it is true that the Agency needed better data to estimate ETU residues, the Agency also needed better data to estimate EBDC residues because EBDC residues can convert to ETU during cooking or other processing and in the body. Dietary risks due to consumption of ETU residues are added to the risks due to the conversion of EBDCs to ETU. Thus, better data on the amount of both EBDCs and ETU were needed. The EBDC/ETU market basket study was required for this purpose.

3. *Comment.* One commenter noted that market basket surveys do not provide any indication of whether, when, or at what rate EBDCs were applied or when the crop was harvested; thus, the required market basket study cannot indicate if reduced rates of applications or extended preharvest intervals might eliminate the current residue problem.

Response. The Agency agrees with the commenter. Market basket data do not provide information on the use patterns used during the survey period nor do market basket data shed light on residues resulting from other alternative use patterns. However, market basket data do provide residues from actual (typical) treatment of the surveyed items. For the PD 4, the Agency estimated the typical use pattern used during the year the market basket survey was conducted through NAPIAP data, contacts with agricultural specialists, and comments submitted to the Agency in response to the PD 2/3.

4. *Comment.* One commenter stated that relying on market basket surveys for estimating dietary exposure is not protective of human health unless tolerance levels are lowered. Further, without an accurate residue monitoring system, the commenter stated that the Agency must assume that residues are at tolerance levels because this is the legally enforceable level. Even if the residue levels later found exceeded the assumed market basket survey level, the Agency would have no legal mechanism to protect the public health. Thus, if the Agency prefers to regulate at some market basket level, then the tolerance level should be lowered accordingly.

Response. EPA disagrees with the commenter. Tolerances are set at the maximum level of pesticide likely to be found on foods treated at the maximum use pattern on the label. Residues are not likely to be found routinely at this level for several reasons. First, average residues from use at the maximum rate and minimum preharvest intervals are not likely to be at the tolerance level because the tolerance level should be set at an upper limit of the residues being found in field trials. Second, not all crops are treated with the maximum use pattern on the label or harvested at the minimum preharvest interval; some are not treated at all. Third, degradation or removal of the residue may occur during storage, commercial processing, or as a result of consumer practices, such as washing, peeling, and cooking. In addition, a consumer is not likely to consume food items always containing tolerance level residues. Over a lifetime, the residue levels actually consumed should approach the average level of residues found in the United States. Nonetheless, the Agency will be lowering tolerances, where appropriate, as a result of the data received in response to the PD 2/3. Finally, FDA will continue to monitor foods for pesticide residues and take appropriate action for residues exceeding tolerances. If average residues from FDA monitoring increase significantly such that there is likely to be a health hazard, the Agency will take appropriate action.

5. *Comment.* One commenter stated that the Agency should rely on the basic data base previously provided by the primary registrants to support all crops voluntarily cancelled by the technical registrants and that the voluntary cancellation of a few uses for a pesticide active ingredient should not invalidate the total data base.

Response. The Agency agrees with the commenter. Voluntary cancellations by the technical registrants do not invalidate previously submitted data. However, the previously submitted data, while they may be the best available data and may have been used in the dietary exposure assessment, may not meet the requirements for new or continued registration or for the purpose of ensuring that tolerances are established at the correct level. Thus, additional data may be required.

6. *Comment.* One commenter stated that the method for handling residue levels in apples below the LOQ requires refinement. Currently, the Agency uses one-half the LOQ as a residue estimate when residues appear non-detectable. The commenter believes most residues in apples are much below one-half the LOQ and that using that value overestimates the residue level. An appropriate residue level to be used for nondetectable residues would be zero because even very small residue levels

may have significant impacts on the risk assessment and EBDCs are non-systemic.

Response. EPA disagrees that zero would be an appropriate residue level for apples where such residues are non-detectable. First, a non-detectable residue is not necessarily zero as it is analytically impossible to measure zero due to the limits of the analytical methodology and instrumentation used to measure EBDCs and ETU. So, to be protective of human health, EPA must assume that residues are present at some level below the LOQ. For the PD 4, EPA assumed that non-detectable residues are present at one-half the LOQ. The choice of this level is discussed in Unit III.E.2. Secondly, even though EBDCs are relatively nonsystemic, residues may still be present at harvest.

7. *Comment.* One commenter pointed out that a number of key crops (i.e., carrots, leaf lettuce, peaches, spinach, and succulent beans) which should have been included in the market basket survey to more accurately determine dietary exposure were not included in the survey. Not only do these crops represent important registration needs, but data from these crops would be translated to other crops including celery, collards, endive, fennel, kale, lima beans, mustard greens, rhubarb, snap beans, and turnips to support continued registration.

Response. Even though carrots, leaf lettuce, peaches, spinach, and succulent beans were specified in the March 10, 1989 EBDC Data Call-In, the technical registrants chose not to include these crops in the required market basket survey for these commodities. Further, no other person or group chose to submit such data either. The default data to be used in the absence of the required market basket survey data are the same field trial data that were used for the dietary exposure analysis in the PD 2/3. In the absence of the required market basket survey data and other data which could have been provided by interested parties, the existing field trial data are the best available data for the dietary exposure analysis for these crops.

8. *Comments received on risk reduction measures and methods.* A number of commenters stated that crops are often washed before being sent to market and some suggested mandating a more thorough washing procedure to reduce EBDC residues and risk, rather than banning the use of EBDCs.

Response. EPA has adjusted the residue estimates for washing prior to consumption. Commercial processing studies include the effects of washing. Studies have indicated that 78 percent of consumers wash their produce prior to consumption (Ref. 29). The Agency, on numerous occasions, has recommended thorough washing of fruit and vegetables to help remove pesticide residues. Because the label might not be seen by the persons responsible for washing, the Agency does not believe that a label requirement to require washing after harvest would be appropriate.

9. *Comment.* Several commenters suggested that preharvest intervals be lengthened, application rates reduced, and that the use of Integrated Pest Management (IPM) be mandated. Further, a commenter suggested that labels be changed so that no detectable residues result in potatoes and other vegetables.

Response. Longer preharvest intervals and reduced application rates are likely to reduce residue levels to some degree; however, such measures might reduce the efficacy of the EBDC fungicides in some cases. Without crop residue data demonstrating the amount of residue reduction and the effect on the efficacy of the fungicide, the Agency cannot fully evaluate these options and estimate potential residue reduction. Further, without residue data, the Agency cannot predict what label changes would be required to result in non-detectable residues. Where it had information on which to base such considerations, the Agency did consider potential altered use patterns as options short of cancellation, along with a requirement that data be submitted to better quantify the amount of risk reduction that could be attained and its effect on plant disease control. Further, for many crops, the technical registrants have proposed use patterns that would result in lower residues. For a number of crops, altered use patterns are being required to reduce dietary risk.

10. *Comment.* A food company suggests postponing cancellation and delaying revocation of tolerances for the southern leafy greens (i.e., collards, kale, mustard greens, and turnip greens) so current uses may be continued under FIFRA section 24(c). These actions are needed so research work currently under way to find substitute methods to control disease can be completed without severe economic consequences during the transition. The company suggests that 3 years should be sufficient to allow for development of alternative control measures.

Response. The Agency believes that it is inappropriate to postpone cancellation of the leafy greens and to delay tolerance revocations to allow use for research purposes because of the estimated dietary risks that would be associated with consumption of EBDC-treated leafy greens. Further, under FIFRA section 24(c), such registrations may not be issued for uses where the registration has been cancelled. Any existing 24(c) registrations for leafy greens would be cancelled along with the other EBDC registrations for such commodities. For research purposes, an experimental use permit may be sought under FIFRA section 5. Also, petitions may be filed with the Agency under 40 CFR 164.130, subpart D if prerequisite requirements are met.

11. *Comment.* One commenter expects levels of maneb residues to be present following the use of Bravo® C/M, which contains chlorothalonil and maneb, to be much lower than would be expected from maneb used alone on all crops for which Bravo® C/M is registered. No residue data were provided to show actual residues of maneb or ETU from the use of Bravo® C/M.

Response. The commenter did not provide data to determine the maneb and ETU residue levels in produce treated with Bravo® C/M. The Agency believes that when maneb is applied at lower rates, lower residue levels will likely result, but the Agency is unable to extrapolate to the levels expected from the use of Bravo® C/M without data.

F. Crop-Specific Comments and Response

1. *Comment on apples.* Several commenters stated that they had participated in a residue study organized by the New England Fruit Growers Council for the Environment, with sampling and analysis being done by the Connecticut Agricultural Experiment Station. Residues in apples were many times below tolerance and the investigators did not find a strong linear correlation between preharvest interval and residue level. The commenters noted that the results are consistent with those of the market basket survey being conducted by the EBDC registrants.

Response. EPA has reviewed the study provided by the New England Fruit Growers Council; the Agency's detailed comments are available. The results of the New England study were found to be consistent with the IAI study (which was used in lieu of the market basket data) reflecting EBDC applications at reduced rates and increased preharvest intervals. The relationship between the preharvest interval and residue level (at the same application rate) was logarithmic as opposed to linear.

2. *Comment on risk reduction for apples.* Many commenters discussed risk reduction measures for apples and possible mechanisms to achieve lower residues. A number of northeastern apple growers stated that EBDCs are needed most early in the season (up to petal fall). The commenters stated that the period from green tip until petal fall is the most critical (usually from early May to mid-June), although the users would prefer to have EBDCs to use through second cover. Harvest is usually in September and October. Further, commenters have indicated that early season use (up to petal fall) should not result in residues at harvest because the residues should degrade by harvest.

Specific suggestions to reduce residues include: Use EBDCs on apples in an IPM program; reduce the tolerance to 3 ppm; require a longer interval between applications; reduce the label rate for summer sprays; lengthen the preharvest interval from 30 days to 60 days or limit use to before July 1; allow less EBDCs to be applied per year and limit the total number of applications per year; and/or require washing of treated apples after harvest.

Commenters noted that many states recommend one-half the label rate as part of an IPM program; thus, lower rates are already in practice and can be assumed to be efficacious. Regional data indicate that EBDCs are regularly used at rates that are at least one-third less than the maximum label rates. The 1989 use survey by IAI showed a large distribution of preharvest intervals in excess of 70 days more than the minimum preharvest interval given on the EBDC labels.

Apples are washed and usually peeled during the processing operation. One commenter referred to a study demonstrating reductions in residues from washing before commercial processing. Other commenters stated that EBDC residues are on the surface only and do not enter the tissue of the apple. They weather, degrade, are washed off, or are removed by peeling. Several commenters stated that EBDCs work well at one-half the normal rate in combination with benomyl or one of the sterol inhibitors.

Response. The EBDC/ETU registrants and IAI have cooperated in investigating a new use pattern for apples using lower application rates and extended preharvest intervals. The IAI data showed low levels of EBDCs and ETU from treatment through bloom; data through second cover were also provided. Washing of apples was considered in the Agency's dietary exposure estimates for the PD 2/3 and was also considered in the PD 4 exposure estimates. Washing and peeling during commercial processing is incorporated into commercial processing factors which were used in both the PD 2/3 and PD 4.

3. *Comments on bananas.* One commenter stated that his organization has quality assurance programs to monitor EBDC levels on unpeeled bananas. Analyses are received on a quarterly basis and the results to date are well below the 4 ppm tolerance. The portion of the banana that is eaten is also tested and no detectable residues have been found. The International Banana Association (IBA) states that banana companies using independent laboratories normally monitor their products to ensure that pesticides residues are negligible or well within tolerances. They point out that bananas are peeled before consumption and that EBDC residues remain on the peel. Fruit with a ruptured peel is removed during prepack quality inspection. Residue tests conducted by IBA member companies have consistently demonstrated the near absence of EBDC derived residues in the edible portion of bananas. The IBA member data were not included in the comment.

The Hawaii Department of Agriculture provided growing information and a summary of residue data for Hawaiian grown bananas. The commenter suggests the following risk reduction measures: establish a 48-hour preharvest interval for bananas; prohibit post-harvest applications of EBDCs; and require that bananas treated with EBDCs be washed after harvest.

Response. A limited monitoring study of imported bananas was done by the EBDC/ETU Task Force (Ref. 20). Banana pulp (the edible portion) was analyzed for EBDC and ETU. Residue levels were reported to be non-detectable in all but one sample. The data from this limited monitoring study were used for the dietary exposure analysis for the PD 4.

Data on Hawaiian bananas are not used for the dietary exposure analysis because Hawaiian bananas represent a very small portion of the bananas available for consumption in the United States. However, the Hawaiian data are important for the continued United States registration of EBDCs on bananas and will be utilized in reassessing the tolerance for bananas.

4. *Comments on carrots.* One commenter suggested the use of EBDCs with IPM programs. Suggested label changes for carrots include: (a) Use lowest rates at the beginning of the spray program, later in season use higher rates to maintain control; and (b) Extend preharvest interval to 21 days.

Another commenter stated that most residues on carrots would be on the above-ground crown of the carrot root. An extended preharvest interval would give time for residues to decline before harvest. Carrots grown for processing are crowned in the field, and only the below ground roots are harvested. At the processing plant the carrots are washed several times, peeled, and washed again before final processing. An extended preharvest interval would also reduce residues in processed carrots.

Response. The residue level of EBDCs, and non-systemic pesticides in general, is most strongly influenced by the application rates used closest to harvest. Thus, using lower rates early in the season and higher rates late in the season would not be expected to reduce residue levels significantly. Residue decline data would be needed to support a longer preharvest interval. In addition, extending the preharvest interval in one growing region may not be acceptable in terms of efficacious disease control in other carrot growing regions.

5. *Comments on hybrid corn production.* A hybrid seed corn producer stated that the risk to consumers from seed corn treated with EBDC fungicides would be negligible. The acreage of seed corn actually treated annually with fungicides is quite small.

Response. In addition to hybrid seed corn production, the Agency must also consider the use on field corn not grown for seed. The EBDC use on field corn is quite small. This was factored into the dietary risk assessment by multiplying the residue and consumption estimates by percent of crop treated.

6. *Comment on cotton.* A cotton grower was unaware of any data that have shown an adverse dietary effect from the use of EBDCs on cotton. The label specifies that EBDCs should not be applied after cotton bolls open; thus, none of the pesticide comes in direct contact with the seed from which cottonseed oil is extracted. EBDCs are applied at 1.6 pounds of active ingredient per acre (lb. a.i./A), 3 applications at 12 to 15 day intervals, after rust spores infect the cotton plants and before boll opening.

Response. Residue levels reported in cottonseed are low, reflecting the early season use. The estimated risk from the use of EBDCs on cotton includes that low level residue and consumption of cottonseed oil and the percent of crop treated.

7. *Comment on crops grown in Georgia.* One commenter is concerned about leafy greens, peppers, and other crops grown in Georgia. The University

of Georgia Department of Horticulture points out that broccoli, cabbage, cauliflower, collards, kale, mustard, and turnips are all in the genus Brassica of the botanical family Cruciferae. The commenter requests that the Agency translate market basket survey data from broccoli to other Brassica vegetables.

Another commenter states that using field trial data and ignoring normal processing methods overstates residue levels on leafy greens. EBDCs are easily diluted by water, with an ordinary rainfall capable of removing the major portion of the residue. Thorough washings are part of canning or freezing processing methods. FDA studies have shown that 89 percent of all produce sampled contained no detectable EBDC residues, and 98 to 99 percent of residues detected were well below established tolerance levels. No one is expected to eat leafy greens in the field. Therefore, testing for residues should give full consideration to the product after it has been handled, not in the unrealistic setting of sample collection in the field.

Response. During the development of the market-basket data requirement, the Agency considered the fact that broccoli, cabbage, cauliflower, collards, kale, mustard, and turnips are all in the same genus and botanical family. EPA is concerned that the exposed surface area for collards, kale, mustard, and turnips would be more likely to lead to higher residues than the exposed surface area of broccoli, cabbage, and cauliflower. Several registrants have noted (in their comments on the current crop grouping scheme) that this occurs. Thus, the Agency believed that it was necessary to collect market basket data for a higher surface area crop (i.e., spinach). Spinach was chosen based on its grouping in 40 CFR 180.34(e). Washing factors (reflecting reduction of residues on washing) and processing factors (cooking or canning) were used in the dietary exposure assessment for the PD 2/3 and are used in the PD 4.

The statistics on the FDA monitoring data quoted by the commenter apply to all chemical/crop combinations monitored and not specifically to EBDCs and ETU on leafy greens. In fact, FDA has found numerous over tolerance residues of EBDCs on a number of leafy greens including mustard greens, spinach, and turnip greens over the past 12 years. Additional leafy green monitoring samples had detectable residues, but not exceeding the tolerance.

8. *Comments on green peppers.* One commenter suggested that the tolerance for green peppers be reduced from 7 ppm to a lower number consistent with actual residues found in the market basket survey. The commenter also suggested instituting a 2-day preharvest interval and requiring washing of peppers prior to packing.

Another commenter stated that there are no alternatives for eggplant and peppers. Increasing the preharvest intervals from 5 days to 14, 21, or even 28 days was suggested.

Response. Tolerances are set at the maximum level likely to be found as a result of the most extreme use pattern on the label and cannot be set at a level found in the market basket survey because tolerance exceeding residues could regularly occur. Residue decline data would be needed to fully evaluate the suggested changes in preharvest intervals. Some decline data are available, but were not used because pepper residue estimates were based on the market basket survey data rather than being extrapolated from field trial data.

The Agency does not believe that a label requirement requiring washing after harvest would be appropriate because it would be difficult to enforce. EPA has recommended thorough washing of fruits and vegetables to remove pesticide residues. Nonetheless, EPA believes that most crops are washed prior to consumption and the residue estimates (except for crops such as onions and bananas which are peeled rather than washed) have been adjusted by including a washing factor where appropriate. Finally, the Agency recognizes that there are no registered, efficacious alternatives to EBDCs for eggplants and green peppers.

9. *Comments on greens.* Several commenters questioned the source of average residue estimates for collards, kale, mustard greens, spinach, and turnip tops found in Table II-7a of the Technical Support Document (Ref. 8). The average residue levels indicated were 3 to 5 times higher than the current tolerance levels. The commenters had not seen these residue levels reported elsewhere, nor experienced those high levels in their own testing programs. The results of the commenters testing programs were not submitted.

Response. The source of the residue estimates used in PD 2/3 was data from field trials conducted by the registrants as a requirement of continued registration. The average residues in those field studies exceeded the current tolerances. This was not surprising as FDA has found (in their surveillance monitoring program) tolerance-exceeding EBDC residues on several leafy greens numerous times in the past 12 years. Tolerance-exceeding residues of EBDCs have been reported in the open literature. Studies submitted by commenters also showed over tolerance residues. The residue estimates in the PD 2/3 were corrected for the effects of washing.

10. *Comments on greens.* A greens grower in the Southeast states that there are no efficacious alternatives to EBDCs for greens (i.e., collards, kale, mustard greens, and turnip greens). One commenter indicated that even though the label recommends 1.2 to 1.6 lb. a.i./A, the standard practice in the Southeast is 1.0 lb. a.i./A; however, another commenter in the Southeast submitted a study that indicated that the rate of 1.6 lb. a.i./A was required for efficacy. Further, one commenter stated that all greens are thoroughly washed before being cooked; washing reduces residues to negligible levels. Finally, using lower rates and spraying less frequently than labelled saves money.

Response. The Agency realizes that there are no registered, efficacious alternative fungicides for leafy greens. Data were not submitted to the Agency at the 1.0 lb. a.i./A rate, only at the 1.6 lb. a.i./A rate and a 0.8 lb. a.i./A rate. An evaluation of preharvest interval on disease control was also included. The data indicated that the preharvest interval should not exceed 10 days. In addition, the 0.8 lb. a.i./A rate may not be effective for disease control, especially for fall cuttings. However, no data were available for the Agency to assess the efficacy of the 1.0 lb. a.i./A rate.

11. *Comments on onions.* The American Dehydrated Onion and Garlic Association submitted actual use information for dry bulb onions used for dehydration. They noted that EPA assumed applications at 2.4 lb. a.i./A, 6 to 10 applications per season, and a preharvest interval of 7 days. Their members used 2.4 lb. a.i./A, 1 to 3 applications per season, with a preharvest interval of 30 to 45 days. If Ridomil® MZ-58 (metalaxyl + mancozeb) were used, the rate used was only 1.0 lb. a.i./A. The Ridomil® label allows only four applications per year. Ridomil® MZ58 is most often used.

This commenter also submitted information on planting, growing, and harvesting practices for dry bulb onions destined for dehydration. One commenter stated that 60 to 70 percent of the dry bulb onions grown in California are grown under contract for drying.

The National Onion Association noted that the market basket survey results do not reflect further residue reductions that occur in typical

consumer food preparation practices. They state that EBDCs are not systemic and do not penetrate into the vegetable or fruit. Any remaining residue after harvest can be washed, rinsed, or peeled off. The outside peel of an onion is never eaten.

Several commenters stated that there was possibly a naturally occurring component of dry bulb onions (carbon disulfide) that might be interfering with the EBDC analysis in the market basket survey. Data were submitted for apparent EBDC residues in untreated onions. The apparent EBDC in untreated onions ranged from 0.05 to 0.36 ppm. The commenters requested that the Agency subtract the average residue found on untreated dry bulb onions from the result found in the market basket survey.

Response. Dietary exposure estimates for onions are now based on the EBDC/ETU market basket survey with corrections for washing, peeling, and cooking. The market basket survey results have been corrected for the apparent carbon disulfide interference in the EBDC analysis. The market basket survey results reflect the typical use pattern.

12. *Comments on papayas.* Several commenters stated that the actual risk to papaya consumers is much less than that estimated by EPA because of conservative application practices currently employed or proposed to be employed by the papaya industry and the reduction of any remaining EBDC residues during commercial handling, storage, transportation, and consumer handling. Under the Hawaiian Fruits and Vegetable Act, fresh commodities exported to the continental United States must be treated with an approved quarantine treatment prior to shipment. In Hawaii, two quarantine treatment systems (double hot water dip and vapor heat treatments) are used commercially. A study examining reduction of residues during commercial handling, storage and transportation has been submitted (Ref. 4).

The commenters stated that mancozeb and maneb are not applied at maximum label rates. Only the minimum number of applications that result in economic benefit are used. Further, papayas are harvested later than the minimum time allowed on the label. They also stated that EBDC and ETU residues at harvest are substantially lower than those shown in field trial data developed to support tolerances.

Information was provided about the growing of papayas and specific information about EBDC treatments. Fruit are sprayed frequently beginning at fruit set which is about 6 to 10 weeks after planting. The fruit and flower column must be sprayed every 14 days for routine prevention. A given fruit generally does not receive more than 13 biweekly mancozeb or maneb sprays by the time of harvest. Another commenter stated that papayas are sprayed frequently beginning at fruit set (6 to 10 months after planting), every 14 days during dry conditions, and every 7 days during rainy conditions.

The commenters offer the following suggestions for risk reductions: Reduce the papaya tolerance from 10 to 5 ppm; increase the application interval from 7 to 14 days; impose a 2–day preharvest interval; require washing of fruit prior to packing (this is already required by the Hawaiian Fruits and Vegetables Act); and prohibit feeding of treated fruit to livestock.

Response. The papaya growers' data have been considered in the Agency's dietary exposure analysis (Ref. 4). The papaya tolerance cannot be reduced under the current use pattern because tolerance-exceeding residues have been reported in field studies reflecting treatment at the maximum use pattern. The maximum rate is being reduced to keep residues within tolerances. The available residue data are for application intervals of about 14 days. A minimum interval of 14 days is being required. A 2–day preharvest interval would not reduce risk because the residue levels reported in field studies were highest 2 days after harvest. Thus, the minimum preharvest interval will remain at zero days. Papayas are not considered a major animal feed, so a label restriction against feeding treated fruit to livestock is not considered necessary. The Agency does not believe that a label requirement requiring growers to wash papayas after harvest is appropriate because it would be difficult to enforce. Nonetheless, EPA believes that most crops are washed prior to consumption and thus the residue estimates have been adjusted by including a washing factor.

13. *Comments on pears.* The mancozeb label allows 24 to 30 lb. product/acre/year but only 12 to 18 lb. product/acre/year is reportedly used in California based on the required California pesticide use reporting. Mancozeb is first applied to pears after bloom through the small red pear stage (April to May); harvest is the last week in July. Therefore, a minimum of 30 to 45 days pass between the last application and the first harvest; thus, the preharvest interval could be extended. Also, EBDCs work well in IPM programs. In the Northeast, mancozeb is needed on pears through petal fall. One commenter stated that early sprays will leave limited residues at harvest.

Response. New field trial data reflecting a modified use pattern (i.e., longer preharvest interval) have been submitted for apples. These data have been translated to pears for the dietary risk assessment and result in a lower risk than was previously estimated. No data were submitted to show the change in residues from the California use pattern on pears. Pears are grown in California; Oregon/Washington; and New York/Michigan. Information was not provided for Oregon/Washington or New York/Michigan.

14. *Comments on potatoes.* Several commenters suggested the use of IPM on potatoes and stated that fewer treatments of EBDCs are used with IPM programs. For potatoes in Wisconsin, one to three fewer treatments are needed.

Suggested label changes for potatoes include: (a) Use lowest application rates at the beginning of the spray program and higher rates later in the growing season to maintain efficacious disease control; (b) Kill the vines 14 days before harvest to reduce a source of fungal inoculum; and (c) Extend the preharvest interval to 14 days as most growers already observe a 14–day preharvest interval. The 0-day preharvest interval invites contamination of tubers with fungicide residues. Chlorothalonil could be used with a 7–day preharvest interval.

The Maine Department of Agriculture Food, and Rural Resources states that seed potatoes in Maine are grown on one/third of Maine acreage. Dietary exposure to EBDC residues on seed potatoes is negligible because virtually all seed potatoes are used for purposes other than consumption. They request that EPA exclude seed potato acreage when estimating risk for EBDCs. They also suggest adding a preharvest interval for potatoes.

Response. The residue level is most strongly influenced by the application rates used closest to harvest. Thus, using lower rates early in the season would not be expected to reduce residue levels significantly. Nonetheless, EPA is requiring changes in the potato use pattern, including extending the preharvest interval, to reduce the dietary risk. The dietary exposure estimate for potatoes in the PD 4 is based on the market basket data for potatoes; therefore, residue levels in seed potatoes were not considered. The Agency acknowledges that a potato vinekill program is helpful to reduce fungal infection.

15. *Comments on tomatoes.* A Federal marketing order requires all Florida tomatoes to be washed prior to entering primary channels-of-trade and inspected by the Federal-State Inspection Service. The commenter states that after picking (90 percent of Florida tomatoes are picked at the mature green stage), tomatoes are placed in ripening rooms for 3 to 5 days and then transported to market. When the tomatoes are transported, they are still not ripe and require several more days at room temperature to fully ripen prior to consumption. Any residues not washed off in the packing process have this additional time to decompose.

Tomato growers in the Southeast stated that farmers stop the application of EBDCs once harvesting begins in order to adhere to the present 5–day preharvest interval. Tomatoes are washed before packing so that actual residue levels are quite low.

The Florida Fruit and Vegetable Association and the Florida Department of Agriculture and Consumer Services submitted a study on degradation of EBDCs in the channels-of-trade. The California tomato growers provided use information for tomatoes.

Response. The Florida degradation study of EBDCs in the channels-of-trade was not used in the PD 4 for tomatoes because the EBDC/ETU market basket survey collected tomatoes in grocery stores, and thus already reflected the reductions measured in the Florida Study. The California use information and the Florida degradation study both corroborate the results of the market basket survey on fresh tomatoes.

G. Other Studies Submitted: Comment and Response

1. *Comment from the Florida Fruit and Vegetable Association.* Florida growers were surveyed on actual use rates, number of applications, and preharvest intervals for a number of crops including cabbage, cucumbers, eggplants, green beans, Irish potatoes, peppers, squash, sweet corn, tomatoes, and watermelons. Descriptions of handling of the commodity after harvest, any processing done, packaging used, and length of time from harvest to sale were also discussed in the comment.

The acreage treated varied from year to year, but the basic rate used per acre, the number of applications, and the preharvest interval remained constant from year to year. Users generally applied less than the label rate and used the label rate only to maintain efficacy. Preharvest intervals are observed and often longer intervals are used, but Florida users do not support longer preharvest intervals on the label unless it is necessary for the continued registration of EBDCs.

Post-harvest practices that would reduce residue levels include: use of directed sprays, water bath to handle product (prevents bruising prior to packing), overhead irrigation prior to harvest to rinse off excess EBDCs, and switching to an alternative fungicide prior to harvest. Most growers use a wash system or hydrocool process with a majority of the vegetable products. Some products are packed in the field, but those that go through a packing house will receive two to three water baths. The only processing done is removing some of the outer leaves and water baths. A post-harvest handling study (i.e., degradation in the channels-of-trade) was also submitted.

Most vegetable products go to market on the day of harvest, and reach the consumer in 3 to 7 days. Fresh vegetables are perishable and must be handled and moved quickly to maintain fresh quality.

Response. Washing is considered in the Agency's dietary exposure analysis. The Florida post-harvest handling study was used to determine EBDC processing factors for carrots and celery. Factors for lettuce and tomatoes could be determined from this study but were not needed because head lettuce and tomatoes were included in the market basket survey. The actual use pattern and post-harvest handling are reflected in the residues of crops included in the market basket survey. The actual use pattern cannot be considered for green beans because of lack of residue decline data; no market basket survey data or field trial data were submitted for green beans reflecting alternative use patterns.

2. *Comment from the Iowa Fruit and Vegetable Growers.* A use survey of Iowa apple, squash, and tomato growers was submitted. Most growers surveyed support longer preharvest intervals to reduce residue levels but not so long as to effectively ban use. Farm practices used to reduce residue levels are spraying the minimum amount of pesticide, using IPM, and washing tomatoes many times before processing. Some growers wash or hydrocool their crop after harvest, and some use mechanical brushes. The length of time from harvest to sale was reported to be 3 days to 6 months for apples, 1 day to 2 weeks for cucurbits, and 1 day to 1 week for tomatoes.

Response. The increase in preharvest interval would be difficult to evaluate without residue decline data. Data are available for a different use pattern for apples and were considered in support of risk reduction measures.

IV. Occupational/Homegardener Exposure and Risk

Part of EPA's basis for initiating a Special Review of the EBDCs was concern that agricultural workers, industrial workers, and homegardeners may be at risk for carcinogenic, developmental, and thyroid effects from exposure to EBDCs and ETU through mixing, loading, and applying EBDC pesticide products to food and non-food crops and conducting field labor in treated areas.

The majority of agricultural uses of the EBDCs (e.g., farming, commercial greenhouse applications, and commercial turf applications) are preharvest. The EBDCs are also used as a seed-piece treatment for potatoes. Because of the many different crops to which EBDC products can be applied, and certain similarities among them, the Agency selected six crops which it believes represent exposure associated with all other crops and types of application. They are apples, grapes, onions, potatoes, sweet corn, and tomatoes. Application methods for EBDCs include ground boom and airblast. EBDCs are also applied to commercial ornamental trees, plants, and shrubs by tractor-mounted power hand-held spray guns.

Homegarden uses of EBDCs include those around the home such as garden, lawn, or tree/shrub applications. Exposure estimates were developed for homegarden application of EBDCs to vegetables, ornamentals, fruit trees, and turf using compressed air hand-held sprayers or hose-end sprayers. Homegarden uses were referred to as homeowner uses in the Preliminary Determination (PD 2/3). The terminology has been updated in the Final Determination (PD 4) for clarity, as homegarden is what the Agency intended in the PD 2/3.

For nabam's industrial uses (i.e., water cooling systems, oil drilling, and paper and sugar mills), there are two types of loading systems: open pour loading and closed loading. Only the water cooling systems (towers) and oil well drilling fluids use an open pour loading system in addition to closed loading systems. The use of nabam in paper and sugar mills employ only closed loading systems.

A. Preliminary Determination

In the PD 2/3, the Agency estimated EBDC exposures using surrogate data bases (i.e., data collected during the use of another pesticide). Mixer/loader and applicator exposures are always dependent on the physical parameters of

application rather than the chemical properties of the pesticide active ingredient. Therefore, mixer/loader and applicator exposure to a pesticide may be estimated using surrogate data.

The initial agricultural worker, industrial worker, and homegardener cancer risks estimated for the EBDC PD 2/3 ranged from 10^{-3} to 10^{-7} (Ref. 8). Occupational risks were estimated assuming that applicators (also potato seed-piece planters and flaggers) wear long-sleeved shirts and long pants, and that mixer/loaders (also the filler and cutter for the treatment of potato seed-pieces) wear long-sleeved shirts, long pants, and chemical-resistant gloves. Protective clothing and equipment specified in the Registration Standards for mancozeb, maneb, metiram, and nabam consists of coveralls, shoes, socks, goggles or a face shield, and chemical-resistant gloves. Also, the use of a chemical-resistant apron during mixing and loading was specified in the Registration Standards. These specifications were factored into the Agency's preliminary analysis. For the PD 2/3 exposure estimates, it was assumed that the use of coveralls by the mixer/loader would reduce exposure by 40 percent (the use of chemical-resistant gloves was already reflected in the original mixer/loader exposure estimates), and that the use of coveralls and chemical-resistant gloves by the applicator would reduce exposure by 65 percent. Most of the occupational carcinogenic risks, which were estimated assuming the use of the coveralls and chemical-resistant gloves, were 10^{-4} or less. Relabelling to require the use of the protective clothing and equipment specified in the Registration Standards was proposed in the PD 2/3. Homegardener exposure estimates were not adjusted for any protective clothing assumptions. Most of the homegardener risks were estimated to be 10^{-6} or less. The occupational and homegardener cancer risks of concern in the PD 2/3 are shown in Table 2 in Unit IV.B. of this Notice.

Using the same protective clothing assumptions listed above, margins-of-exposure (MOEs) were estimated for agricultural workers, industrial workers, and homegardeners who may be exposed to EBDC pesticide products. Developmental MOEs were estimated using daily exposure estimates for acute effects. Thyroid MOEs were estimated using seasonal exposure estimates. The subchronic no-observable-effect level (NOEL) and the chronic lowest-observable-effect level (LOEL) for the thyroid effects MOE calculation is 0.25 mg/kg/day (Ref. 8). The NOEL for the developmental effects MOE calculation is 5 mg/kg/day (Ref. 8). Most MOEs reported in the PD 2/3 were greater than 100. The MOEs of concern in the PD 2/3 are shown in Table 2 in Unit IV.B. of this Notice.

The risk estimates are for a 70–year lifetime and assume 40 years of exposure through application. These assumptions are also used for homegardeners applying EBDCs.

B. Final Determination on Occupational and Homegardener Exposure and Risks

As part of the Special Review process, EPA has reevaluated the exposure estimates used in estimating the risks from occupational and homegardener exposure to EBDCs. Since the publication of the EBDC PD 2/3 and the receipt of additional data required in the March 10, 1989 Data Call-In (DCI), several factors affecting occupational and homegardener exposure/risk have changed and have been used in this exposure analysis.

1. *Changes in assumptions* —a. *Usage assessments.* Revised usage assessments were prepared for EBDC use on commercial ornamentals and in cooling towers to provide a more precise assessment of occupational exposure during a 90–day use period for subchronic health effects.

The use rates used to estimate occupational exposure estimates, with the exception of homegardener uses, commercial ornamental uses, and industrial uses, are required in this Final Determination as new maximum label rates and are detailed in Unit VII.B. of this Notice (Ref. 37).

b. *Potency factor.* The estimated cancer potency, or Q_1^*, for ETU has been revised since the PD 2/3 was issued. The revised Q_1^* is 0.11 $(mg/kg/day)^{-1}$ and is discussed in Unit II of this Notice (Refs. 10 and 37).

c. *Dermal absorption factors.* Adequate data were available at the time the PD 2/3 was issued to determine the rate of dermal absorption for mancozeb (10 percent), metiram (6 percent), and nabam (9 percent). Due to a lack of adequate data, the dermal absorption rate for maneb was based on an ETU dermal absorption study (30 percent). New data required in the March 10, 1989 DCI have been submitted and reviewed. Based on these new data, the dermal absorption rate for maneb has changed from 30 percent in the PD 2/3 to 1 percent for the PD 4 (Refs. 37 and 38).

d. *Metabolic conversion factors.* Following dermal absorption, EBDCs are metabolically converted to ETU in the body. Metabolism studies used for the PD 2/3 analysis indicated that 20 percent of the absorbed EBDC is metabolically converted to ETU. These studies were reevaluated subsequent to the PD 2/3 and the metabolic conversion of EBDC to ETU was found to be 7.5 percent (Ref. 37).

e. *Conversion of EBDC to ETU in the spray tank.* In the PD 2/3, mixer/loader and applicator direct exposure to ETU in the EBDC formulation and spray solution were estimated using a limited data set. The March 10, 1989 DCI required that EBDC registrants submit tank-mix stability data for representative end-use products of all formulation types to better estimate the conversion of EBDC to ETU while in the spray tank. These data have been reviewed and accepted by the Agency. As a result of these new data, the conversion factors (i.e., the percent of EBDC converted to ETU) for maneb and metiram have changed. All conversion factors decreased with the exception of mancozeb for mixer/loaders and applicators (factors remained unchanged) and maneb for mixer/loaders (factors increased from 0.1 percent to 0.2 percent of EBDC converted) (Ref. 37).

f. *Industrial uses.* The Agency believed that the risk estimates based on agricultural exposure data may possibly overestimate exposure for nabam's industrial uses. The March 10, 1989 DCI required exposure data on oil well drilling and paper and sugar mills. The Chemical Manufacturers' Association (CMA) submitted an antimicrobial study with dermal and inhalation unit exposure estimates for these uses. The Agency has reestimated the industrial use exposure estimates based on these data. The nabam industrial exposure values derived from the CMA study reflected the range of protective clothing used in an industrial setting. Therefore, it was not necessary for the Agency to adjust the exposure values for the use of protective clothing (Ref. 37).

EPA has reevaluated the risk from occupational and homegardener exposure to EBDCs as a result of these changes. The new risk estimates are based on new required maximum label rates and assume the use of the protective clothing required by this Final Determination (except for homegardeners). The risks of concern are shown in the following Table 2:

TABLE 2.—PD 2/3 RISKS OF CONCERN COMPARED TO THE PD 4 ESTIMATES

EBDC/USE	PD 2/3 Cancer Risk	PD 4 PD Cancer Risk	PD 2/3 MOE	PD 4 MOE
Maneb/Commercial ornamentals	1×10^{-3}	1×10^{-5}	6 (Thyroid)	2,630 (Thyroid)
Maneb/Homegarden vegetables	2×10^{-5}	2×10^{-7}		
Maneb/Homegarden ornamentals	1×10^{-4}	1×10^{-7}		
Maneb/Homegarden Turf	4×10^{-4}	4×10^{-6}	60 (Develop)	400(Develop)
Maneb/Homegarden Fruit Trees	2×10^{-4}	2×10^{-6}		
Mancozeb/Homegarden Turf	7×10^{-5}	1×10^{-5}		
Mancozeb/Homegarden Fruit Trees	4×10^{-5}	6×10^{-6}		
Nabam/Paper and Sugar Mills			75 (Thyroid)	2,510
Maneb/Commercial Grapes			20 (Thyroid)	5,590 (Thyroid)

C. Comments and Response (Refs. 39 and 40).

Review of the public comments regarding occupational and homegardener exposure revealed six recurring exposure reduction suggestions: stricter protective clothing requirements on EBDC labels, reduced application rates and frequencies, increases in the reentry and preharvest intervals, changes in formulation and packaging, use of engineering controls, and restricting EBDC use.

1. *Stricter protective clothing and equipment requirements on EBDC labels.* Thirteen comments were received which stated that stricter protective clothing and equipment requirements should be required on EBDC labels. Chemical goggles, rubber gloves, coveralls, rubber boots, and suitable NIOSH approved respirators (or equivalent) were among the clothing and equipment recommended.

Commenters noted that the Agency should consider that protective clothing is not always made available, hazard training is often lacking, and the discomfort of protective clothing in hot weather may preclude use in the field. Also, commenters noted that homegardeners will probably not follow label precautions.

Response. In the December 20, 1989 **Federal Register** notice and corresponding Technical Support Document, the mixer/loader and applicator exposure estimates were reduced by 40 percent and 65 percent, respectively, to account for the protective clothing specified in the Registration Standard. Mixer/loader exposure estimates were reduced by 40 percent to account for the addition of coveralls over long-sleeved shirts and long pants (use of chemical-resistant gloves was already reflected in the original mixer/loader exposure estimates). Applicator exposure estimates were reduced by 65 percent to account for the addition of coveralls over long-sleeved shirts and long pants, and chemical-resistant gloves. Certain types of protective clothing and equipment such as goggles, face shields, chemical-resistant aprons, respirators, and rubber boots would only be used by workers handling concentrated pesticide products (i.e., mixer/loaders).

The Agency agrees that these protective clothing and equipment for mixers, loaders, and applicators may create problems due to availability, usage training, and comfort.

The use of protective clothing and equipment by harvesters and other workers reentering areas treated with EBDCs would also be expected to reduce exposure. The extent of this protection varies from crop to crop. Availability, training, and comfort are, once again, concerns that may affect the proper use of the protective equipment. These issues will be considered when the required dislodgeable foliar residue and worker reentry studies have been evaluated.

2. *Reduced application rates and frequencies.* A total of 20 comments were received on this issue. Several commenters indicated that farmers typically apply EBDCs to some crops at less than maximum rates or frequencies. In many cases, farmers were able to control diseases using fewer applications and lower rates than those indicated on EBDC labels. In addition, a user survey indicated that about one-fourth of the recommended EBDC applications are used. One commenter stated that the use of disease prediction software reduces the number of sprays per season.

Response. The occupational exposure and risk estimates reported in the PD 2/3 and the corresponding Technical Support Document were estimated using typical application rates and frequencies. Label maximum rates and frequencies were not used unless these values coincided with the typical values. Some of the typical values used are less than the reduced rates recommended in the public comments.

3. *Increase in the preharvest and reentry intervals.* Nineteen comments were received which recommended lengthened preharvest intervals for EBDCs. Several commenters recommended requiring reentry standards for specific crops. Also, a user survey indicated that longer preharvest intervals would be acceptable to Iowa vegetable growers.

Response. Lengthened preharvest intervals would be expected to reduce potential exposure to harvesters. However, preharvest intervals neither restrict nor prohibit reentry into treated fields to do nonharvesting tasks. This issue will be addressed through other label requirements (if determined necessary) when the reentry data are evaluated.

Increasing the reentry interval would be expected to reduce worker reentry exposure to EBDCs. However, at this time, insufficient dislodgeable foliar residue data have been evaluated to determine the effect of the lengthened reentry intervals recommended in the public comments. This issue will be considered further when the residue and reentry data are evaluated.

4. *Changes in formulation and packaging.* Four comments were received concerning changes in formulation and packaging. One commenter recommended a reduction in the percentage of active ingredient in the formulation. Another recommended packaging EBDCs in water soluble packets. Also, a commenter noted that a formulation such as wettable dispersable granules was recommended to reduce dermal and inhalation exposure to handlers.

Response. Dustless EBDC formulations and packaging EBDCs in water soluble packets would be expected to reduce occupational

exposure. However, insufficient data exist to quantitatively evaluate the effect of this mitigating option.

5. *Engineering controls.* One comment was received which stated that applicators should use enclosed cabs with positive pressure filtration systems.

Response. The Agency agrees that the use of enclosed cab tractors with positive pressure filtration systems would reduce exposure to EBDC applicators.

6. *Restricted use.* Two recommendations were made to make EBDCs restricted use pesticides.

Response. Making EBDCs restricted use pesticides would have no quantitative effect on estimated risk because the exposure assessment is based on pesticide use by experienced handlers.

7. *Miscellaneous comments—Comment.* (1) The Nabam Task Force has submitted to the Agency their assessment using the Chemical Manufacturers' Association's (CMA) antimicrobial study (OPP 30000/53: D–11599). The Task Force concluded that the CMA biocide exposure study fills the gap in exposure data for industrial applicators of nabam. The study was carried out using current protocols and monitored applicators carrying out application tasks typical of nabam uses. The Task Force believes that the resulting exposure data are thus much more relevant to the assessment of nabam risks than are the agricultural exposure data on which EPA previously relied. The daily exposure of nabam applicators was estimated by the Task Force to be much lower than the exposures EPA estimated in the Technical Support Document. The MOEs for thyroid effects associated with these new exposures range from 3,600 for paper mill applicators to 29,000 for cooling tower applicators. All these MOEs are well above those EPA considered acceptable. Especially in view of the small number of applicators who apply nabam, the Task Force argued that the overall risk of nabam use to workers is extremely small.

Response. The Agency found the CMA study to be useful in assessing exposures to nabam from industrial uses. However, the Nabam Task Force assessment of the CMA data was unacceptable for several reasons. First, the Task Force presented dermal exposure data from the hands instead of whole-body data. Inhalation and body exposures were also monitored in the CMA study. Even though the exposure to the hands is generally higher than exposure to other body parts, the Agency believes that all the monitoring data collected in the CMA study should be used. The total exposure estimates determined in the CMA study are representative of actual use conditions and reflect the protection afforded by protective clothing actually worn by the workers in the field. Second, the Task Force rejected certain replicates because the workers did not wear protective gloves. The Agency believes that the replicates represent typical practices in the "real world" regardless of their deviation from product labels. The inclusion of those replicates would make the database more representative of actual exposure conditions. Therefore, the Agency has used the CMA data in a manner that is more consistent with Subdivision U of the Pesticide Assessment Guidelines and reestimated the nabam exposures for the two uses addressed in the Task Force's assessment.

Comment. (2) The California Rural Legal Assistance Foundation asked if the Agency received an explanation for the observed difference in residues between sites monitored for mancozeb residues in Rohm and Haas's grape dislodgeable foliar residue study.

Response. The Agency has reviewed Rohm and Haas's explanation for the difference between the day zero mancozeb residues found in Fresno and Madera and those found in Monterey and Napa. The maximum label rate for application of the product used in the study to grapes is 3.2 lb. a.i./acre. However, sites in Monterey and Napa received applications at rates of 6.7 and 4.5 lbs a.i./acre, respectively. Therefore, data collected at these two sites are inappropriate for the reentry exposure assessment.

V. Summary of Benefits Assessment and Agency Evaluation of Comments and Additional Data Received

A. Synopsis of Benefits Assessment

1. *Overview of comments received.* EPA received over 200 comments on the Preliminary Determination (PD 2/3) benefits assessment. The majority of comments supported the continued use of EBDC products but did not contain scientific data supporting the usefulness of the EBDCs to control plant diseases. The Agency was also able to obtain and examine useful data for many sites. A variety of sources were used to determine the usefulness of such comments, including the 1991 National Agricultural Pesticide Impact Assessment Program (NAPIAP) Fungicide Benefits Assessment (Ref. 24), published comparative performance data, communications with agricultural specialists familiar with the diseases and the crop in question, in-house expertise, proprietary sources, books, and professional journals. EPA considered the information provided by agricultural specialists reliable based upon the Agency's understanding of the epidemiology of the disease and agricultural practices for the crop in question. The estimates are provided as but one opinion because the Agency cannot document the basis for these opinions. Generally, estimates based on information from NAPIAP are secondary sources of information. Such estimates are more fully described in the benefits site analyses which are available in the EBDC public docket. These estimates are expressed in ranges where possible. These estimates may be subject to uncertainty, particularly where data from studies were not available.

In some instances the information provided in the comments did not result in significant quantitative changes between the preliminary and final benefits assessment. One example is peppers. Comments in response to the PD 2/3 on peppers addressed the importance of the use of EBDCs in combination with copper for control of bacterial spot. For the PD 2/3, the Agency was not aware of this use of EBDCs because control of bacterial spot is not claimed on the pesticide's label. Further investigation led the Agency to revise its estimates which resulted in only a minor increase in the estimated average benefits of EBDCs on peppers. The Agency did adjust its benefits assessment taking this information into account. The average total impact increased from $73.5 million to $82.5 million.

In other cases, such as with oats, comments and efficacy data which the Agency obtained made a significant difference in the final analysis. Commenters stated that oat varieties previously resistant to crown rust are displaying an increasing incidence of crown rust due to a new race of the fungus. Crown rust is a fungal disease not listed as a disease mancozeb controls on small grains; however, EBDCs are efficacious against a related rust disease, leaf rust, on small grains. Due to the similarity of the two diseases, the Agency assumes that mancozeb is likely to control crown rust as well. Sulfur, the only registered alternative fungicide to EBDCs on oats, is not effective for control of crown rust. This new information has resulted in an increase in the EBDC benefits assessment for oats ranging from $0.1 to $0.5 million in the PD 2/3 to $3.8 million to $25 million in the PD 4.

2. *Total benefits.* In the PD 2/3, the Agency estimated that cancellation of

all EBDC registrations for all food crops would result in a direct first-year loss to growers (i.e., direct producer impacts) of approximately $46 to $75 million. Beyond the grower impacts, the Agency estimated total losses to society (i.e., efficiency impacts) to be $90 to $305 million. The estimated total losses to society (i.e., efficiency impacts) are the net impacts of losses and gains of the EBDCs to producers (users and non-users), distributors, and others in the marketing chain, as well as the final consumers. The estimated impact of cancellation of non-food uses and industrial sites was expected to not exceed $1 million.

The Agency has revised its site-by-site and aggregate benefits estimates for all 56 sites based on the public comments received, the NAPIAP report, and additional research. EPA now estimates total first-year EBDC impacts in the range of $290 to $630 million. Of this total, direct producer impacts constitute approximately $140 to $262 million. The remaining impacts are consumer and efficiency impacts. No specific comments were received regarding non-food uses; therefore, the $1 million estimate for non-food uses as reported in the PD 2/3 remains unchanged.

While the total benefits (i.e., economic impacts) may appear significant, the high estimate of $630 million represents less than 1 percent of the total 1989 United States farm value of production. Based on average retail values, the overall impact on consumers would be proportionally less than the farm level impacts. The Agency has estimated a nationwide total benefits range but understands the potential for severe regional impacts. For example, leafy green growers in the southeastern region of the United States are likely to face economic impacts far more severe than leafy green growers in other areas. In addition, potato growers in the Northeast, Florida, and Wisconsin may face significant secondary impacts in the cultivation of crops not treated with EBDCs because of rotational restrictions on use of the major alternative, chlorothalonil.

The total benefits estimate is projected for only the first year following the loss of EBDCs. This estimate assumes no acreage or import/export adjustments during this first year. In addition, the availability of alternatives and (for the most part) efficacy of alternatives is assumed constant for the first year. These assumptions may result in an overstatement of benefits if growers were able to make gradual adjustments in response to the unavailability of the EBDCs.

3. *EBDC usage.* In the PD 2/3, the Agency estimated total average annual EBDC usage over the 1986 to 1988 period in the range of 12 to 18 million pounds active ingredient. The largest individual usage sites, by volume, included apples, cucurbits, onions, potatoes, small grains, sweet corn, and tomatoes. Important use sites in terms of percent of crop treated included apples, cucurbits, leafy greens, lettuce, onions, peppers, potatoes, and spinach. The Agency has revised its total annual EBDC usage estimate based on additional information received in response to the PD 2/3. Total average annual usage for a "typical" current year (prior to 1990) is now estimated at approximately 8 to 12 million pounds active ingredient.

The broad spectrum of activity of EBDCs and their relatively low cost have made them widely used fungicides. EBDCs also have a multi-site mode of action (i.e., affecting 2 or more enzyme systems) and are used in some cases to slow or prevent the development of fungal resistance, which is more likely to occur with fungicides that have more limited modes of action. For example, EBDCs are used in combination with metalaxyl on potatoes for control of late blight. EBDCs applied with metalaxyl reduce the development of late blight isolates resistant to metalaxyl.

EBDCs are also found to have a synergistic effect with copper, increasing the ability of copper to control bacterial diseases compared to copper applied alone. This is important in the control of bacterial speck on tomatoes and bacterial spot on peppers and tomatoes.

EBDCs may play an important role in Integrated Pest Management (IPM) practices. University scientists have developed disease forecasting systems to determine environmental conditions favorable for disease development. These forecasting systems have led to the more judicious applications of EBDCs during disease outbreaks. Examples are potato late blight control programs and apple scab control programs. The successful use of EBDCs on apple IPM programs is discussed in Unit V.B.

EBDCs are registered for use on many minor vegetable and fruit crops for which there are limited available field trial data, production cost figures, usage data, and other information typically used by the Agency to quantify benefits. Nonetheless, the Agency believes the continued use of EBDCs on many of these minor crops does provide benefits to users and society. For example, even though the benefits cannot be quantified for almonds, apricots, asparagus, caprifig, crabapple, fennel, pecans, pineapple, quince, rhubarb, and sugar beets, inhibiting fungal resistance to other fungicides is one benefit demonstrated by EBDCs. For other crops such as eggplant and endive, there are no viable alternatives. Yield losses are likely for eggplant and endive where the only alternatives are copper fungicides which are phytotoxic.

4. *Alternative fungicides.* The Agency considered chlorothalonil to be the most widely used alternative fungicide to replace EBDCs for fungal disease control. Several comments in response to the PD 2/3 indicated that crop rotations would be restricted with the use of chlorothalonil, a restriction not present with EBDCs. The chlorothalonil label states that fields treated with chlorothalonil cannot be rotated with crops not listed on the chlorothalonil label for 12 months after treatment. The Agency is aware that dry bean, potato, seed corn, tomato, and other growers practice a variety of crop rotations depending on agronomic reasons such as plant disease control. The quantification of these benefits was difficult as was the quantification of other EBDC benefits such as the fungicide's use in pest resistance management. However, when possible, EPA provided quantitative estimates of such benefits as well as considering the qualitative benefits in the final assessment.

B. Site-Specific Summaries

The following paragraphs are summaries for sites where there was a significant change in the estimated impacts. These revisions are based on rebuttals to the original analyses and other new information that became available to EPA subsequent to publication of the PD 2/3. Sites summarized below include: apples, leafy greens (i.e., collards, kale, mustard greens, and turnip greens), papaya, potatoes, and tomatoes. The complete assessments for all 56 sites is available (Ref. 32).

1. *Apples.* Mancozeb, maneb, and metiram are registered to control several important fungal diseases on apples. The registered alternatives to EBDC fungicides include benomyl, captan, copper fungicides, dodine, fenarimol, thiophanate-methyl (TM), triadimefon, and triforine. However, none of these fungicides are considered to be a universal substitute for the EBDC fungicides. Fungal resistance to benomyl and TM has developed, reducing the

ability of these two systemic fungicides to control apple diseases in orchards.

The Agency received comments in response to the EBDC PD 2/3 supporting the continued EBDCs use on apples from a variety of sources including the EBDC/ETU Task Force, apple growers, university scientists, and the International Apple Institute (IAI). Many of the comments addressed the ability of captan, which is incompatible with mineral oil, to replace EBDCs. Mineral oil is applied at the same time EBDC fungicide applications are made for control of apple scab.

Mineral oil is used to decrease early season mite populations. This early mite population control reduces the total number of miticide applications needed during the course of the apple growing season. One of the major alternatives to EBDCs, captan, cannot be used with mineral oil because this combination is phytotoxic to apple foliage. Thus, if the use of EBDCs are cancelled on apples and is replaced by captan, the Agency believes that this would result in an increase of 1 to 2 additional miticide applications in lieu of mineral oil during the growing season and would have a negative impact on apple IPM programs.

Commenters also expressed concern that without the use of EBDCs, additional chemical applications would be needed on apples. The commenters indicated that EBDCs are the most efficacious fungicides for control of summer diseases. The Agency estimated that additional captan applications used in combination with benomyl would be necessary to achieve comparable efficacy for summer disease control. Assuming that information gathered from NAPIAP, other comments, and university scientists familiar with apple pathology is correct, up to 3 additional captan applications may be required depending upon the apple growing region. In the Northeast, mancozeb provides a supplemental nutrient source of zinc. Apple soils in this area are deficient in zinc, a necessary micro-nutrient for apple production. The Agency estimates that 1 to 2 additional zinc applications would be necessary in this region in the absence of EBDCs.

In the PD 2/3, the Agency estimated approximately 48 percent of all United States apples were treated with EBDCs. The cancellation of EBDCs was estimated to result in a net producer loss of $0.3 million to $10.3 million. Consumer impacts were not quantified.

Revised usage estimates indicate that approximately 48 to 50 percent of the total United States apple acreage is treated with EBDC chemicals in a typical year. Based on comments and data, the Agency estimates as it did in the PD 2/3, that aggregate EBDC user production could decline by about 9 percent. The Agency now estimates total EBDC first-year benefits at approximately $51.8 million. Growers are expected to face both price adjustments and increased production costs. Consumers are estimated to pay about 2.5 to 3.5 percent more for apples.

2. *Leafy greens (collards, kale, mustard greens, and turnip greens).* Maneb has been used for control of fungal leaf spot diseases on leafy greens with a Special Local Needs registration for the use of the fungicide in Georgia. Leafy greens do not appear on the current Federal maneb label. Historically, maneb has been used to treat 90 percent of the leafy green crops.

In the PD 2/3, the Agency estimated a complete crop loss on the second cut of the leafy greens without the use of EBDCs. In response to the PD 2/3, data were submitted on the efficacy of maneb for control of fungal leaf spot on turnip greens. Based on these data, the Agency estimates that, without the use of EBDCs, approximately 50 percent of the fall second cutting would be unacceptable, according to USDA grading standards for processing, due to fungal leaf spot. EPA also assessed the effect of EBDCs on the spring leafy green crop and observed no significant differences between EBDC and untreated controls in terms of fungal leaf spot control. However, leafy green producers prefer to grow the fall leafy green crop due to climatic conditions which reportedly produce a more succulent crop. Thus, the Agency estimated from these data that growers would incur a 25 percent yield loss (50 percent decrease in yield on the fall second cutting) if the use of EBDCs is cancelled for leafy greens. The Agency estimates that yield losses could be higher if a third cutting were attempted. Assuming information on this site as presented in the 1991 NAPIAP report is correct, yield losses could be as high as originally stated in the PD 2/3 (i.e., 50 percent) if environmental conditions favor disease.

EBDC benefits were not quantified for the PD 2/3 due to the lack of data available to the Agency. Current first-year producer benefits are estimated as follows: collards ($5.7 to $13.7 million), kale ($2.1 to $5.0 million), mustard greens ($4.1 to $9.7 million), and turnip greens ($3.2 to $7.6 million). Consumer and community impacts may occur, although no quantitative measure could be obtained.

3. *Papayas.* Mancozeb is used on papayas to control anthracnose and Phytophthora fruit rot. Hawaii encompasses 95 percent of the United States papaya production; 100 percent of the papaya acreage in the state is reported to be susceptible to Phytophthora fruit rot. Information supplied to the Agency since the PD 2/3 indicates that 100 percent of all papaya acreage in Hawaii is treated with mancozeb to control this disease. The Agency does not have EBDC usage data for Florida.

EBDCs reportedly provide benefits not realized with chlorothalonil. Quarantine regulations require Hawaiian papaya shipped to the mainland United States to be treated to prevent the transmission of fruit flies. Information submitted in response to the EBDC PD 2/3 indicates a phytotoxic response when chlorothalonil-treated papaya fruit are later treated by either of the usual quarantine methods, which are double hot water and vapor and dry heat. The data indicated that chlorothalonil-treated fruit followed by a double hot water dip resulted in an average of 85.8 percent of the fruit being scalded (browning of papaya fruit) on at least 10 percent of the surface area. Similar results are to be expected with the vapor and dry heat method. This scalding of the fruit results in the fruit being unmarketable. Therefore, the Agency does not consider chlorothalonil to be a viable alternative to EBDCs for control of fungal diseases on papaya in Hawaii.

Florida papaya fruit are not subject to the same quarantine restrictions as the Hawaiian fruit. Hence, the heat treatments discussed above do not have to be used. Thus, Florida growers can use chlorothalonil without having a concern for scalded fruit. Commenters submitted data comparing chlorothalonil and EBDCs for control of Phytophthora fruit rot. Based on the information submitted, the Agency estimates a 6 percent decrease in yields in the absence of EBDCs for Florida papaya growers applying chlorothalonil. No decrease in efficacy is anticipated with replacing EBDCs with chlorothalonil for control of anthracnose.

For the PD 2/3, data were not available to accurately quantify the benefits of EBDCs on papayas. Based on the comments received, the Agency estimates the benefits of EBDCs for papaya could be as high as $8 million representing about 54 percent of the estimated total 1989 value of United States papaya production. Consumer impacts have not been quantified but are expected to be significant in terms of the current retail market value. The possibility of a rapid production transfer from Hawaii to Florida has not been determined.

4. *Potatoes.* Mancozeb, maneb, and metiram are used to control early blight and late blight as well as fungi identified in potato seed-piece decay. EBDC foliar applications are made to an estimated 56 percent of the total United States potato acreage. Alternative fungicides registered for use on potatoes include: anilazine, chlorothalonil, copper compounds, formaldehyde, metalaxyl, streptomycin, TM, thiabendazole, and triphenyltin hydroxide (TPTH). However, there is no one alternative fungicide registered to control all the potato diseases for which EBDCs are registered.

The Agency has information which suggests that applications of TPTH at label rate result in a phytotoxic response to potatoes. Applications of TPTH at a reduced rate and a reduced rate of mancozeb together have been efficacious for control of early blight without burning potato foliage. If EBDCs are cancelled on potatoes, growers would resist using TPTH due to phytotoxic concerns with the fungicide. Early blight resistance to another registered alternative fungicide, iprodione, has limited the usefulness of iprodione in the future.

In the PD 2/3, the Agency concluded that for foliar diseases, the EBDCs and chlorothalonil are more efficacious than their registered alternatives and that chlorothalonil combined with metalaxyl is somewhat more effective than EBDCs. The Agency received several comments disagreeing with the Agency's conclusion that chlorothalonil is more efficacious than mancozeb. Based on a review of comparative performance studies used for the PD 2/3 analysis and data submitted as comments on the PD 2/3, the Agency believes that although applications of chlorothalonil may result in less early or late blight, there are no significant yield differences realized between treatments of chlorothalonil and mancozeb.

Commenters also addressed crop rotation restrictions with chlorothalonil. Potato growers in the western United States mainly use EBDCs to control early blight. In the absence of EBDCs, the Agency assumed that western growers would switch to anilazine because of the crop rotation restrictions following the application of chlorothalonil. The increased costs of anilazine were incorporated into the revised assessment. Data submitted indicate that anilazine used to control early blight provides yields similar to the yields achieved with EBDCs.

Data indicate that late blight is a disease that can cause significant yield losses in New England. Yield losses occur to a lesser extent in Florida, New York, Pennsylvania, and Wisconsin due to the differences in climatic conditions. Based on the NAPIAP report and data published in Fungicide and Nematicide Tests (Ref. 41), the Agency estimates that yield losses can average 50 percent on untreated potato plants and can reach 100 percent under heavy disease pressure. Without the use of EBDCs, growers would need to use the chlorothalonil/metalaxyl combination for late blight control rather than the EBDC/metalaxyl combination. This would force growers to rotate potatoes with crops on the chlorothalonil label to legally use the chlorothalonil/metalaxyl fungicide. Potato producers switching to the chlorothalonil/metalaxyl alternative would be subject to rotational restrictions.

For the PD 2/3, the Agency estimated total annual EBDC benefits on potatoes at approximately $0.4 million. Based on data and comments received, the Agency's estimated impact was revised to approximately $40 million which represents approximately 2 percent of the total 1988 value of United States potato production. The Agency's estimate is based on the assumption that alternatives are equally efficacious. The estimate represents aggregate production cost impacts using alternative controls for both seed-piece and foliar needs. The Agency anticipates negligible impacts to producer gross revenues and to consumers.

Rotational restrictions are not included in the benefit estimate presented above. As discussed above, the Agency is aware of rotational restrictions with use of the chlorothalonil/metalaxyl alternative which may result in additional impacts to growers. Based on information submitted by commenters, the Agency estimates that total secondary rotational impacts may be as high as $52 million in the northeastern potato growing regions. Assuming this information is correct, this would be in addition to any potential impacts in Florida and Wisconsin. The Agency believes some secondary impacts may occur but does not have sufficient economic data to support or refute the assumptions used for this estimate.

5. *Tomatoes.* EBDCs are used on tomatoes to control anthracnose, early blight, late blight, gray leaf spot, gray leaf mold, and septoria leaf spot. The Agency estimates that 30 to 40 percent of the United States tomato acreage is treated with EBDCs. Registered alternatives to EBDCs include anilazine, benomyl, captan (plant bed only), chlorothalonil, various copper compounds, dichlone, dicloran, ferbam, and metalaxyl. In the absence of EBDCs, the Agency estimated that tomato growers would switch to chlorothalonil for disease control.

Many of the comments to the PD 2/3 focused on applications of copper and EBDCs tank-mixed together to control bacterial spot and bacterial speck. For the PD 2/3 analysis, the Agency did not consider the use of EBDCs for control of bacterial diseases on tomatoes because EBDC labels did not list bacterial diseases as pests controlled. Thus, the Agency was not aware of a common grower practice of mixing copper and EBDCs for bacterial disease control on tomatoes. The Agency acknowledges that bacterial diseases are important and that the data available indicate that EBDCs increase the efficacy of copper for controlling these diseases on tomatoes.

Historically, copper has been used to control bacterial diseases on tomatoes. However, the development of bacterial isolates resistant to copper has reduced the efficacy of copper. Copper-resistant bacterial spot isolates have been reported in many tomato growing regions. Bacterial spot isolates previously resistant to copper become susceptible to the copper/maneb combination. Scientists speculate that this increase in efficacy is due to a synergistic reaction occurring between the two pesticides when they are tank mixed.

Studies have indicated that growers can substitute maneb and copper with chlorothalonil and copper and achieve equal efficacy when only bacterial spot isolates susceptible to copper are present. However, unlike maneb, there are no data available indicating a synergistic reaction occurring between a tank-mix of chlorothalonil and copper. Due to this lack of synergy, the combination of chlorothalonil and copper may not be effective in situations when copper insensitive isolates are present. Data submitted in response to the PD 2/3 indicated that affected tomato growers could incur yield losses as high as 20 percent if bacterial spot is not controlled. No estimate of the lower bound yield loss was available.

EBDCs and copper are also applied to control bacterial speck, specifically in the Northern tomato growing region. Bacterial speck is of concern early in fruit development with the disease usually being of little concern when the fruit is ready for harvest. Data submitted in response to the PD 2/3 indicated that tomato fruit had significantly less bacterial speck infection when treated with EBDC/copper combinations compared with chlorothalonil/copper

combinations. Under heavy disease pressure, the Agency estimates that growers can expect a 5 to 10 percent yield loss.

Commenters responding to the PD 2/3 also questioned the ability of chlorothalonil to act as a replacement for EBDCs on tomatoes in California. The commenters submitted data disagreeing with the Agency's PD 2/3 estimate of an increase in efficacy with chlorothalonil compared to EBDCs for control of black mold. The commenters also stated that crop rotation restrictions with chlorothalonil limit the use of the fungicide in California.

Based on the data submitted, the Agency agrees with the commenter that chlorothalonil is as efficacious as EBDCs for control of black mold. The Agency is aware, from comments to the PD 2/3, that California tomato growers rotate tomatoes with crops not included on the chlorothalonil label. This will be of potential concern to California tomato growers who use EBDCs to control black mold and late blight if they choose to rotate to crops not on the chlorothalonil label. These growers could switch to anilazine without changing their rotations and without any decrease in efficacy. The increased cost of anilazine was incorporated into the revised benefits assessment.

The benefits for tomatoes have increased from the PD 2/3 estimate of $0.1 million to the current estimate of $32 million to $45 million. This increase is due to: (a) A revised percent-crop treated estimate; (b) Updated yield loss projections; and (c) Revised cost estimates on the likely alternative fungicides. The current benefits represent approximately 3 percent of the total 1989 value of the United States tomato production.

C. Response and Comments: General

1. *Comment.* The American Farm Bureau submitted comments supporting the continued use of EBDCs. The commenter stated that the Agency understated the benefits of EBDCs and highlighted several issues concerning the Agency benefits analysis including: (a) The Agency should recognize economic data submitted in response to the PD 2/3; (b) EPA failed to consider the efficacy of alternative fungicides; (c) EPA did not consider the label constraints of alternative fungicides; (d) The Agency did not consider the affect of selected alternative fungicides on crop safety (e.g., phytotoxicity); and (e) EPA did not consider the total available supply of alternative fungicides.

Response. The Agency has considered the comparative efficacy of alternative fungicides to EBDCs and possible label restrictions. One example is crop rotation restrictions with chlorothalonil. The chlorothalonil label states that crops not listed on the fungicide's label cannot be rotated with chlorothalonil-treated crops for 12 months. This information is reflected in the Agency's benefits analysis. The Agency has assessed the viability of alternative fungicides to EBDCs, the availability of the fungicide, and possible phytotoxic responses to the crop when the alternative fungicide was applied. One example is copper. Copper is registered to control many of the same diseases as EBDCs. The Agency was aware that applications of copper can injure foliage of several crops such as lettuce and spinach. Also, the Agency considered the present and future availability of alternative fungicides to EBDCs as part of the Agency's benefits analysis.

2. *Comment.* The EBDC/ETU Task Force submitted comments highlighting the benefits of EBDC fungicides for control of plant diseases. Their comments included information and data on the benefits of EBDCs for 10 crops: apples, bananas, cucurbits, grapes, onions, peanuts, potatoes, small grains, sweet corn, and tomatoes. The EBDC/ETU Task Force also submitted data on fungicide resistance including information on fungal resistance to EBDCs and alternative fungicides.

Response. Information and data provided by the EBDC/ETU Task Force were used as part of the Agency's benefits assessment. Detailed responses to the Task Force's comments on apples, grapes, peanuts, potatoes, small grains, sweet corn, and tomatoes are discussed in Unit V.D. of this document.

3. *Comment.* The Florida Farm Bureau Federation submitted comments supporting the continued use of EBDCs on certain agricultural crops. A survey of pesticide usage by the Florida Farm Bureau Federation members was included in their comments. Other information was included on their analysis of the projected impact of cancellation of EBDC fungicides on fruit, small grain, and vegetable production in Florida.

Response. The Agency appreciates pesticide user groups conducting surveys on pesticide usage by its membership. The information included in the Florida Farm Bureau Federation survey was useful, along with other information, for the Agency in terms of assessing pesticide usage, alternative fungicides, and diseases the fungicides control. The data highlighting the possible impact of the loss of EBDCs to crop production were incorporated in the final benefits analysis.

4. *Comment.* GRC Economics, on behalf of Atochem North America, submitted comments (which included information based on results from the NAPIAP report), supporting the continued use of EBDCs. The commenter also stated that crop rotation restrictions on the chlorothalonil label limit the usefulness of the fungicide as a substitute to EBDCs for potatoes and tomatoes.

Response. EPA used the NAPIAP report and other information to assess the possible impact of the cancellation of EBDCS on agricultural crops. Estimates provided in the NAPIAP report were considered in the Agency's final benefits assessment. The Agency recognizes that crop rotation restrictions are present with applications of chlorothalonil and that the chlorothalonil label states that fields treated with chlorothalonil cannot be rotated with crops not listed on the chlorothalonil label. This type of limitation does not appear on EBDC labels. This potential limitation is reflected in the Agency's final benefits assessment.

5. *Comment.* Hogan and Hartson, on behalf of the Rohm Haas Company, submitted comments supporting the continued use of EBDCs on agricultural crops. Hogan and Hartson commented on several issues of the EBDC PD 2/3 benefits analysis including: (a) The need for apple growers to apply additional captan applications to compensate for the absence of EBDCs; (b) The incompatibility of captan and mineral oil on apple foliage; and (c) Crop rotation restrictions for the use of chlorothalonil, propiconazole, and triadimefon on potatoes and small grains, respectively.

Response. The Agency realizes that if this information is correct and growers replace EBDCs with captan, additional pesticide applications may be needed. The Agency estimates up to three additional captan applications might be needed to achieve comparable disease control to EBDCs. One to two additional captan applications may be required in the mid-Atlantic apple growing region and two to three additional captan applications in the Northeast. Due to the incompatibility of captan and mineral oil, the Agency estimates growers would need to replace the use of mineral oil with one to two additional miticide applications per growing season. Crop rotation restrictions are present on the chlorothalonil, propiconazole, and triadimefon labels. The fungicide labels restrict crop rotations to crops that are listed on the particular fungicide's label for a specific period of time. In the case

of chlorothalonil, the fungicide label states that fields treated with chlorothalonil cannot be rotated with crops not listed on the chlorothalonil label for 12 months. The Agency is aware that growers practice a variety of crop rotations depending on agronomic factors.

6. *Comment.* The National Food Processors Association (NFPA) submitted comments in support of the continued use of EBDCs on agricultural crops. Their comments were based on a study conducted by NFPA and depicts the 1989 usage of EBDCs, the availability of alternatives to EBDCs, and the benefits of the fungicide. NFPA directed their comments toward the importance of EBDCs on apples, broccoli, carrots, grapes, pears, peppers, potatoes, spinach, sweet corn, and tomatoes.

Response. The Agency appreciates the increased user group involvement. The information from comments and responses to the surveys by NFPA were examined by the Agency in its final benefits analysis.

D. Crop-Specific Comments and Response

1. *Comment on the importance of EBDCs to apple cultivation.* Growers submitted comments stating the importance of mancozeb on apples. Specifically, 2 growers mentioned that mancozeb is used as a supplemental source of zinc in addition to its disease control properties

Response. For the PD 2/3 analysis on apples, the Agency was not aware of mancozeb's role as a source of zinc fertilizer. EPA has further examined this issue and now estimates northeastern apple growers would apply one to two additional zinc micro-nutrient applications if EBDCs were cancelled. The additional expenses for northeastern apple growers was factored into the final benefits analysis.

2. *Comment supporting the continued use of EBDCs on apples.* The EBDC/ETU Task Force, as well as apple growers, submitted comments supporting the continued use of EBDCs on apples. The Task Force stated that captan is not as efficacious as EBDCs for control of summer diseases (i.e., bitter rot, fly speck, and sooty blotch). They indicated that if EBDCs were not available to apple growers, three additional captan applications would be needed to compensate for captan's lack of efficacy compared to the EBDCs. The Task Force also commented on the compatibility of EBDCs and mineral oil. Mineral oil is used to reduce early season mite populations. However, applications of captan and mineral oil have resulted in a phytotoxic response to apple foliage. They remarked that an increase in miticide applications would be necessary if EBDCs are cancelled on apples.

Response. The Agency acknowledges that in the absence of EBDCs, an increase in the number of captan applications may be necessary, especially for control of summer diseases. The Agency estimates that one to three additional captan applications may be necessary to compensate for the cancellation of EBDCs depending on the apple growing region. This information was incorporated in the Agency's analysis. The Agency agrees that captan applied in combination with mineral oil is phytotoxic to apple foliage. If EBDCs are cancelled on apples, this would be detrimental to apple IPM programs. The Agency estimates that one to two additional miticide applications may be needed in the absence of EBDCs.

3. *Comment on EBDC usage for apples.* Fungicide usage information on Michigan apples was submitted as a joint report by the Michigan State University Cooperative Extension Service, Michigan Processing Apple Growers, and the Michigan Farm Bureau. The IAI also submitted fungicide usage information on apples in addition to data supporting the continued use of EBDCs on the crop. The commenters stated that: (a) EBDCs are the most effective fungicide for control of bitter rot, fly speck, and sooty blotch; (b) Reduced rates of EBDCs are applied to apples and have been found to be efficacious; (c) Quality impacts were not quantified in the PD 2/3; (d) EBDCs are important in terms of fungicidal resistance management; (e) EBDC use varies by geographic region; and (f) The cost of the registered alternatives will change if EBDCs are cancelled.

Response. The Agency appreciates the information from both surveys. This information helped EPA to have a better understanding of chemical usage on apples. Both surveys were examined in by the Agency in its final benefits assessment.

In response to the first point, EPA believes that applications of benomyl in combination with captan are as efficacious as EBDCs for control of summer diseases. However, additional captan applications would be needed to achieve this efficacy. The Agency estimates that one to three additional captan applications may be needed in the absence of EBDCs depending on the apple growing region.

With respect to the second point, EPA agrees that apple growers may find EBDC fungicides applied at a reduced rate to be effective. However, under heavy disease pressure, the Agency estimates that the full label rate may be needed for efficacious disease control. This will vary depending on the specific disease being targeted and the geographic location. For the purpose of estimating the cost of fungicide applications, the Agency assumed that the maximum application rate is used.

The Agency considered regional diversity and corresponding usage and economic impacts for the PD 2/3 and for this Final Determination. The Agency has examined its analysis to further reflect this diversity. Information on regional impacts are incorporated into the analysis.

Along with their estimated annual short-term benefits, the EBDCs may also have some long-term benefits for apple production. The Agency believes that without the use of EBDCs on apples, it may be possible that there could be a permanent economic decline to selected apple growers in limited areas. Consumer impacts are likely to be minor to negligible as adjustments are made in production and trade patterns.

With respect to quality impacts, EPA in the PD 2/3 qualitatively evaluated a decrease in apple quality and concluded that any anticipated quality impact would be minor, falling within the benefit range identified. This assumption is carried into the current estimates.

Fourthly, the Agency is aware that EBDCs have often been relied upon to slow or prevent the development of fungicide resistance on apples. One example is EBDC use in combination with benomyl or ergosterol biosynthesis inhibitor fungicides.

Regarding geographic variation, EPA considered regional usage of EBDCs in both the PD 2/3 and in this Final Determination. For the PD 4, the Agency reviewed the IAI survey in examining regional variation in fungicide usage. The IAI survey is generally consistent with the NAPIAP data. The primary difference is that the IAI survey identifies higher usage in the Southeast than that used by the Agency (i.e., 97 percent vs. 86 percent).

Finally, EPA is aware that Agency action can increase the costs of alternative controls and crop production. These factors have been taken into account. The revised cost analysis now indicates a net cost increase to growers with the use of alternatives.

4. *Comment supporting the continued use of EBDCs on bananas.* The International Banana Association submitted comments supporting the continued use of EBDCs on bananas. They stated that black sigatoka is a

devastating disease to banana growers and must be controlled for the banana industry to survive; it is the greatest single plant disease threat to food production in the tropics and to the worldwide banana industry. Further, the commenter stated that because of intrinsic differences in their climatic and cultural practices, Hawaiian producers cannot be considered representative of the South and Central American growers who supply the large majority of bananas to the United States market. In its own analysis, the Association has determined that the loss of one or both of the EBDC fungicides will lead to increased dependence on systemic fungicides, foster development of resistance to available fungicides, and place both the world banana industry and local tropical agriculture at a grave risk.

Response. The Agency recognizes that increased dependence on systemic chemicals and increased pest resistance to available fungicides may to occur over time. However, no specific yield loss estimates are available to allow the Agency to quantitatively address the impacts.

5. *Comment on the benefits and use of EBDCs on bananas.* A commenter stated that in the PD 2/3, the Agency underestimated the benefits and overestimated the usage of EBDCs on bananas in Hawaii. The commenter indicated that grower yield impacts of $2.1 to $4.1 million could result from yield and fruit quality losses caused by the black leaf streak disease in Hawaii if the EBDC fungicides were cancelled.

Response. Additional information available to the Agency since the PD 2/3 indicates 100 percent of all banana acreage in Hawaii is treated with EBDCs. Data were not submitted to support the yield impact in the absence of EBDCs. The Agency has no data to support or refute the estimated yield impacts to growers.

6. *Comment on carrots.* One Wisconsin commenter supported the continued use of EBDCs on carrots and proposed amending the mancozeb label to extend the preharvest interval of EBDCs on carrots from 7 to 21 days. The commenter suggested that this would result in reducing residues without compromising efficacy. Other suggested amendments to the label included supporting the use of IPM programs already adopted by carrot growers in his State. One example of an IPM program was the use of weather monitoring programs to more accurately depict increases in disease development and more judicious fungicide applications.

Response. The Agency appreciated the material provided. This type of information assists the Agency in evaluating possible label changes for mancozeb intended to reduce the risk of the fungicide while maintaining disease control. The provided data support the proposed label changes for Wisconsin; however, the changes may not be applicable to other carrot growing regions.

7. *Comment on broccoli, brussels sprouts, cabbage, and cauliflower.* GRC Economics, on behalf of Atochem North America, commented that crop rotation restrictions on the chlorothalonil label limit the usefulness of the fungicide on cole crops.

Response. The Agency is aware of the crop rotation restrictions associated with the use of chlorothalonil. However, the commenter did not supply data that would allow the Agency to determine the impact of this restriction on cole crop production.

8. *Comment on cotton.* The National Cotton Council of America and the Trans-Pecos Cotton Association, among others, submitted comments supporting the continued use of EBDCs on cotton. The commenters said that EBDCs are needed to control cotton rust in the southwestern United States cotton growing region. Arizona and the National Cotton Council indicated that yield losses have been reported to be as high as 50 to 75 percent if cotton rust is not controlled.

Response. No data were submitted by commenters to support these yield loss estimates. The estimates provided to the Agency are considered to be opinion, as opposed to actual data.

9. *Comment on the importance of EBDCs to cucurbit cultivation.* One commenter stated that EBDCs are critical to watermelon producers because plant breeders have not developed watermelon varieties resistant to fungal plant pathogens. Research has demonstrated that without the use of EBDCs, losses due to some foliar pathogens can exceed 75 percent. Estimates indicated that during the previous 5 years, about 70 percent of the watermelon acreage was treated with one or more EBDC compounds, or combinations of an EBDC compound with other fungicides.

Response. The Agency recognized the importance of fungicides in cucurbit production in the PD 2/3. Estimated impacts to the cucurbit markets due to loss of EBDCs were based on the relatively higher cost of chlorothalonil. These impacts ranged from an estimated $3.8 million to $8.6 million annually. No yield impacts were anticipated based on available comparative product performance data. USDA estimates for yield losses were up to 10 percent for melons, but there is no information to support the yield loss estimate of 75 percent for watermelon if the EBDCs were no longer available. However, Agency scientists believe that this yield loss estimate is probable if there are no controls for the foliar problems on watermelons; however, in actual practice, alternative control will be employed and any yield loss minimized.

10. *Comment on alternative fungicides for cucurbits.* One commenter stated that if the EBDCs were not available for use on cucurbits, chlorothalonil would be the major alternative to control foliar fungal diseases. Such an action would result in an impact for growers who switch to chlorothalonil and also experience viral diseases on cucurbit acreage. Mineral oil, which is compatible with EBDCs, is used to control the insects that spread the virus. Combinations of chlorothalonil and mineral oil applications result in phytotoxicity.

Response. The Agency has no data to quantify yield losses due to aphid-borne viruses on cucurbits. The commenter knew of no way to quantify losses from viral diseases because such studies have never been done. The Agency has considered the projected increase in the cost of production, taking into account the production cost changes for insecticides compatible with chlorothalonil to control aphid-feeding, as recommended in IPM programs, especially in Florida.

11. *Comment on dry beans.* The Agency received comments from North Dakota State University and Colorado State University in response to the EBDC PD 2/3 indicating that chlorothalonil had rotational restrictions that would make it an inappropriate alternative for control of rust on dry beans.

Response. The 2 registered alternative fungicides that are available to control rust on dry beans are chlorothalonil and sulfur. Chlorothalonil provides effective control; however, it has rotational restrictions on the label stating that a crop that does not appear on the label cannot be planted in a chlorothalonil-treated field for up to a year after the last chlorothalonil application. The only other alternative is sulfur which is not effective against rust.

A majority of the dry bean producing states are in climatic zones that are not favorable to disease development. However, there are 2 main bean-producing regions that may be affected by rust. The largest is the bi-state area of Minnesota and North Dakota. The second is Colorado and surrounding areas consisting of northwestern

Kansas, southwestern Nebraska, northeastern New Mexico, northwestern Texas, and southeastern Wyoming. In both regions rust is an intermittent problem, depending on environmental conditions.

Minnesota and North Dakota produce 580,000 acres of dry beans. In a given year, approximately 1 to 20 percent of this acreage is treated with fungicides. Eighty percent of the bean crop in the treated areas is rotated with small grains. The remainder is rotated to either potatoes under irrigation or occasionally to sugar beets.

In the Colorado area there are approximately 150,000 acres that are affected by foliar pathogens; 60 percent of this area is treated with fungicides. Of the treated area approximately 50 percent is rotated with sugar beets, sunflowers, small grains, or miscellaneous vegetables that do not appear on the chlorothalonil label. The other 50 percent is rotated with corn.

If rotational restrictions are followed and different acreage is treated each year, and if this information is correct, 80 percent of the fungicide-treated bean acreage in Minnesota and North Dakota and 50 percent of the treated acreage in the Colorado region could be affected by these restrictions at some point in time.

12. *Comment on grapes.* The EBDC/ETU Task Force submitted information and documentation supporting the continued use of EBDCs on grapes. The Task Force highlighted several issues that they considered important for the use of EBDCs on grapes including: (a) The Agency incorrectly stated that EBDCs are not registered for control of eutypa dieback and are efficacious against both phomopsis cane and leaf spot and eutypa dieback; (b) EBDCs are the only efficacious material for control of black rot and downy mildew, specifically in the eastern United States; (c) Mancozeb is used to control angular leaf scorch in New York; and (d) There have been reports of captan-treated grapes not being accepted by grape processors.

Response. Deadarm is listed on the mancozeb label as one of the diseases the fungicide controls. However, scientists now classify deadarm as 2 distinct diseases: (1) eutypa dieback and (2) phomopsis cane and leaf spot. The Agency maintains that mancozeb is only efficacious against one of the 2 diseases once grouped together as deadarm—phomopsis cane and leaf spot.

The Agency maintains that black rot can be controlled effectively with either myclobutanil or triadimefon if EBDCs are cancelled on grapes.

Downy mildew could be controlled by either captan or copper fungicides in the absence of EBDCs. However, assuming the information available to the Agency is correct, copper fungicides are phytotoxic to hybrid grapes, possibly resulting in a 20 percent yield loss on approximately 10 percent of the hybrid grape acreage.

Angular leaf scorch is a new fungal disease not listed on the mancozeb label. Mancozeb is used to control the fungus reported to occur on approximately 5 to 10 percent of the grape acreage in New York.

The Agency is aware of this new disease in New York, but it does not have data to determine the economic loss if EBDCs were no longer available to control angular leaf scorch. The Agency is also aware that there have been reports of grape processors refusing to accept grapes treated with captan and has included this information in the final benefits analysis for EBDCs on grapes.

13. *Comment on lettuce.* EAK AG, Inc. (on behalf of the Grower-Shipper Vegetable Association of Central California and the Western Growers Association) and other commenters submitted information and documentation supporting the continued use of EBDCs on lettuce. The material included data on the comparative efficacy of registered fungicides on lettuce, production information, usage information, and proposed label changes.

Response. The information provided by the commenters was considered in the final benefits assessment for the use of EBDCs on lettuce.

14. *Comments on leafy greens.* Comments were received from leafy greens growers, food processors, and university extension scientists supporting the continued use of maneb on leafy greens. One processor submitted as comments to the Agency a paper to be published in the journal "Plant Disease" studying the effectiveness of maneb to control leafspot on turnip leafy greens.

Response. The Agency is aware of the importance of maneb for control of foliar diseases on leafy greens. Data submitted by Southern Frozen Foods indicating the effectiveness of EBDCs for control of leafspot on turnip greens helped the Agency to estimate yield losses on that crop in the absence of EBDCs. The Agency encourages the public to submit scientific, statistically sound studies for comparative performance purposes. Data provided by other commenters were used in estimating yields and crop values.

15. *Comments on onions.* Growers from New York state submitted comments supporting the continued use of EBDCs on onions. One commenter stated that EBDC fungicides are applied and used according to Cornell University Cooperative Extension Service recommendations. The fungicides are alternated weekly so that pesticide resistance is minimized. EBDC fungicides are relatively inexpensive when compared to alternative materials, and are a major component in overall disease management programs. Another grower commented that EBDCs provide outstanding control of onion diseases; therefore, growers can use fewer sprays.

The American Dehydrated Onion and Garlic Association also submitted comments supporting the continued use of EBDCs on onions. In the PD 2/3, EPA assumed that metalaxyl would replace 33 percent of the EBDC-treated acres if the EBDCs were no longer available and iprodione would replace another 33 percent. The commenter states that metalaxyl use will be less than 33 percent and iprodione use greater than 33 percent.

Response. The relative expense of the EBDC fungicides, and their role in overall disease management in onions, are addressed in the PD 2/3 and in this Final Determination.

In the PD 2/3 the Agency concluded that in the event of a cancellation, one-third of the onion acres currently treated with EBDCs would be treated with chlorothalonil, one-third would be treated with chlorothalonil plus metalaxyl, and one-third would be treated with iprodione. While the above assumption of each of the 3 alternative scenarios replacing one-third of EBDC treatments may not be precise, the Agency has no data to support other assumptions.

16. *Comment on papayas.* The Hawaiian Papaya Industry Association submitted information and data indicating that chlorothalonil is less efficacious than mancozeb for control of phytophthora fruit rot of papaya. The commenters stated that applications of chlorothalonil result in a 6 percent yield loss (a decrease of 2,085 pounds of papaya per acre) compared to applications of mancozeb.

Also, the commenter indicated that quarantine regulations require Hawaiian papaya fruit to be treated to reduce the introduction of fruit flies into the continental United States. Previously, papaya fruit were treated with a double hot water dip. This year, the industry began a vapor and dry heat treatment to increase pulp temperatures beyond those obtained with the double hot water treatment. In one study submitted by the commenters, chlorothalonil-treated papaya fruit followed by

applications of the double hot water treatment bath resulted in approximately 85.8 percent of the fruit scalded (i.e., browning of papaya fruit) on at least 10 percent of the surface area. Similar results are expected with the vapor/dry heat method.

Response. The Agency agrees that chlorothalonil appears to be less efficacious than mancozeb for control of phytophthora fruit rot on papayas. This information was included in the benefits assessment described in this document.

The Agency acknowledges that scalding of chlorothalonil-treated fruit followed by either a vapor/dry heat or double hot water treatment is of serious concern for Hawaiian papaya growers. Because of this, the Agency does not currently consider chlorothalonil as a viable alternative for Hawaiian papaya growers. This information was included in the current benefits analysis.

17. *Comments on pears.* Comments were received from pear growers and university extension agents supporting the continued use of EBDCs on pears. The commenters stated that EBDCs are effective in controlling pear scab and fabrea leaf spot on pears.

Response. The Agency is aware that mancozeb is an effective fungicide for control of fabrea leaf spot and pear scab. The Agency believes that in the absence of EBDCs, pear growers could use ziram without a decrease in efficacy.

18. *Comments on peppers.* Comments were received from pepper growers, State agricultural agencies, and other interested parties supporting the continued use of EBDCs on peppers. The commenters stressed the importance of EBDCs used in combination with copper for control of bacterial spot. They stated that copper compounds are the only registered pesticide to control bacterial spot but are not effective alone against the disease due to the development of bacterial spot resistance to copper compounds.

Response. The Agency acknowledges that EBDCs enhance the ability of copper compounds to control bacterial spot. Copper compounds, the only registered pesticide for control of bacterial spot, does not appear to be efficacious by itself to control the disease. This information was considered in the final benefits analysis for the use of EBDCs on peppers.

19. *Comments on peanuts.* The EBDC/ETU Task Force submitted information and documentation supporting the continued use of EBDCs on peanuts. The Task Force presented 3 issues: (a) Chlorothalonil, the registered alternative to EBDCs on peanuts, promotes an increase in Sclerotinia blight infection; (b) Crop rotation restrictions with chlorothalonil need to be considered. The chlorothalonil label states that fields treated with chlorothalonil cannot be rotated to crops that are not on the label for 12 months after a chlorothalonil application; and (c) EBDCs provide a supplemental source of manganese for North Carolina and Virginia peanut growers. The Task Force indicated that North Carolina and Virginia peanut soils are commonly deficient in manganese. Growers in these areas commonly apply mancozeb for disease control and as a source of supplemental manganese. If EBDCs are unavailable on peanuts, the EBDC/ETU Task Force stated that growers would apply 1 to 2 applications of chelated manganese per growing season.

Response. From a review of the data included in the Task Force's comments, the Agency agrees that applications of chlorothalonil could promote an increase in the incidence of Sclerotinia blight infection compared to untreated fields. The Agency estimates that 1 to 2 additional iprodione or pentachloronitrobenzene applications would be needed (to control an increase in Sclerotinia blight infection).

The Agency is aware that peanut growers in the North Carolina/Virginia peanut growing region and the southeastern peanut growing region commonly rotate their crop. However, the Agency was not provided with information as to the affected acreage or the affected practices in these areas and therefore cannot estimate the impact.

The Agency recognizes that some growers in North Carolina and Virginia rely on mancozeb as a manganese source and estimates that 1 to 2 additional chelated manganese micronutrient applications might be necessary in these 2 States if EBDCs were not available on peanuts.

20. *Comments on the importance of EBDCs and TPTH to potato cultivation.* The Agency received comments from potato growers and university extension plant pathologists discussing the importance of mancozeb used in combination with TPTH, a registered fungicide for control of early and late blight on potatoes. The commenters stated that TPTH is phytotoxic to the crop at the label rate. Growers commonly tank-mix a reduced rate of TPTH with mancozeb to avoid phytotoxicity and still have efficacious control of potato diseases. The commenters contend that without the use of mancozeb, TPTH could not be used effectively.

Response. The Agency acknowledges that TPTH phytotoxicity on potatoes is of serious concern, especially in the New England and the North Central potato growing regions. TPTH applied at a reduced rate in combination with mancozeb is efficacious against both early and late blight without a resulting phytotoxic response. If the use of EBDCs is cancelled on potatoes, and if the information is correct, growers in these regions will not be able to use TPTH effectively. This information was included in the benefits assessment for the use of EBDCs on potatoes.

21. *Comments on the importance of EBDCs in controlling late blight on potatoes.* Several commenters discussed the importance of EBDCs for control of late blight and stated that Ridomil® MZ58, a fungicide containing mancozeb and metalaxyl, is used to control the fungus on potatoes. The commenters stated that if EBDCs are cancelled, Ridomil® MZ58 would not be available for disease control. Another metalaxyl product, Ridomil®/Bravo® 81W is also available for late blight control. Ridomil®/Bravo® 81W contains chlorothalonil and metalaxyl as its 2 active ingredients. The commenters indicated that due to crop rotation restrictions with chlorothalonil, growers that intend to rotate crops not listed on the chlorothalonil label would not be able to use Ridomil®/Bravo® MZ58.

Response. The Agency agrees that late blight is a serious disease on potatoes, especially in New England, and to a lesser extent, in Florida, New York, Pennsylvania, and Wisconsin. Without the use of EBDCs, growers would switch to chlorothalonil and metalaxyl for control of late blight. However, crop rotations with potatoes would be limited to crops listed on the chlorothalonil label. If growers have a history of late blight, then growers would have to alter their crop rotation practices to allow the use of Ridomil®/Bravo® 81W on their fields.

22. *Comments on chlorothalonil as an alternative fungicide for potatoes.* Commenters disagreed with the Agency's conclusion that chlorothalonil statistically is more effective than mancozeb in controlling early and late blight on potatoes. The commenters stated that although research has shown chlorothalonil is more efficacious than mancozeb, specifically for early blight control, the differences are not statistically significant.

Other commenters including the EBDC/ETU Task Force, the National Potato Council, and State extension agents disputed the viability of chlorothalonil as an alternative to EBDCs on potatoes. These commenters all stated that crops treated with chlorothalonil cannot be rotated with crops that are not on the chlorothalonil

label within 1 year after the last application. The commenters stated that the restrictions will interfere with crop rotations practiced by U.S. potato growers.

Response. In the PD 2/3, the Agency concluded that if EBDCs are cancelled on potatoes, growers would switch to chlorothalonil. At that time, Agency scientists concluded that chlorothalonil-treated acreage would have higher yields than those treated with mancozeb. However, after reviewing comparative performance literature on the 2 fungicides used for the PD 2/3 and new data submitted as comments to the PD 2/3, the Agency agrees that there are no significant differences between the fungicides for control of early blight. The Agency considered this information in its PD 4 benefits analysis.

The Agency is aware that chlorothalonil has crop rotation restrictions. However, according to data submitted by commenters, growers can use anilazine (an alternative fungicide that does not have these restrictions), without a decrease in efficacy for control of early blight. Anilazine's higher cost has been factored into the Agency's analysis.

Fungal resistance to metalaxyl has limited the use of the fungicide for control of late blight, a potentially devastating disease to potato producers. Due to the limited mode of action of metalaxyl, plant pathogenic fungi have developed resistance to the fungicide. This has prompted the registrant of metalaxyl to package the fungicide with protectant fungicides having a broader mode of action (e.g., chlorothalonil or EBDCs). The use of metalaxyl and a protectant fungicide results in a decrease in the development of fungi resistant to metalaxyl. Without EBDCs, growers whose crop rotations limit their use of chlorothalonil would not be able to apply metalaxyl. This would leave the growers without an efficacious fungicide for control of late blight. The Agency has considered this situation in the final benefits analysis.

23. *Comment on resistance to alternative fungicides for potatoes.* A North Dakota State University researcher stated that there have been reports of fungal resistance to thiabendazole and TM by the silver scarf fungus, a fungus associated with potato seed-piece decay.

Response. The Agency agrees that, if this information is correct, silver scarf resistance to thiabendazole and TM may threaten the usefulness of these fungicides in the future. However, even if EBDCs are not available, captan could be used effectively to prevent potato seed-piece decay.

24. *Comment on small grains.* The EBDC/ETU Task Force submitted information and documentation supporting the continued use of EBDCs on small grains. The Task Force stated that crown rust infection on oats has been increasing in North Dakota and Wisconsin. The commenters argued that without the use of EBDCs, there would be no efficacious fungicides to control the disease on oats. The Task Force also noted that triadimefon, a likely alternative to EBDCs on small grains, has crop rotation restrictions.

Response. The Agency acknowledges that without the use of EBDCs, oat growers would have no efficacious fungicide for control of crown rust and could have yield losses as high as 20 percent, if the information presented is correct. The Agency is also aware of crop rotation restrictions with triadimefon. This information was included in the benefits analysis of EBDCs on small grains.

25. *Comments on spinach.* Commenters in support of the use of EBDCs on spinach stated their opinion that: (a) Maneb provides excellent control of spinach downy mildew at a per acre cost of only $14.50 compared to a per acre application cost of $83.31 for fosetyl-aluminum; (b) Spinach yields were reduced by 23 to 30 percent without applications of maneb; and (c) Fosetyl-aluminum has proven to be inconsistent in combating downy mildew.

Response. The Agency agrees that maneb is less expensive and more effective than fosetyl-aluminum for control of downy mildew on spinach. Fosetyl-aluminum is not registered for use on spinach but has been used on spinach under FIFRA section 18. This information was included in the final benefits analysis for spinach. On the basis of data and other information, the Agency has also revised its benefits assessment for spinach and now estimates that yield losses of up to 40 percent for the winter crop in certain areas are likely if viable alternatives are not available and if the disease situation is severe. Further, the Agency believes that an aggregate yield loss is likely without effective controls.

26. *Comment on sweet corn.* The EBDC/ETU Task Force submitted comments supporting the continued use of EBDCs on sweet corn. Comments were provided concerning the economics of fungicide costs for fresh market sweet corn for EBDCs and alternatives and resulting impacts on production.

Response. The Agency has taken into account new cost information. The economics assessment for sweet corn has been revised to reflect new chemical cost and revenue figures.

27. *Comment on the importance of EBDCs in controlling late blight on tomatoes.* The California Tomato Board and the Processed Tomato Foundation submitted information and documentation discussing the importance of mancozeb used in combination with metalaxyl for control of late blight on tomatoes in California. Due to reports of fungal resistance to the systemic fungicide metalaxyl, the fungicide is sold as a package mixture containing metalaxyl in combination with a protectant fungicide (chlorothalonil or mancozeb) to reduce the development of fungal resistance to metalaxyl. Without the continued registration of mancozeb on tomatoes, the commenters expressed concern that the registrants for metalaxyl may discontinue supporting the use of metalaxyl on tomatoes.

Response. The Agency agrees that in the absence of EBDCs for tomatoes, the continued use of metalaxyl may be limited. Metalaxyl is only marketed with mancozeb or chlorothalonil. Thus, the use of metalaxyl would be limited as a result of the chlorothalonil plant back restriction. The combination of metalaxyl and EBDCs provides a level of control of late blight on tomatoes that cannot be achieved in the long term by either chemical alone. However, growers may also choose anilazine. Thus, growers in California could use metalaxyl as a package mix with chlorothalonil or anilazine alone for control of late blight without a decrease in efficacy. Crop rotation restrictions are not listed on the anilazine label. However, crop rotation restrictions with chlorothalonil may limit the metalaxyl/chlorothalonil combination for tomato growers.

28. *Comment on the importance of EBDCs in controlling bacterial diseases on tomatoes.* Comments relating to the EBDC PD 2/3 were received from the EBDC/ETU Task Force, tomato growers, user groups, university researchers, and other interested parties discussing the role of EBDCs for the control of bacterial diseases on tomatoes. The commenters stated that the Agency failed to include in its analysis consideration of the use of EBDCs and copper to control bacterial spot. Growers commonly tank-mix copper and EBDCs and claim it is the only efficacious material for bacterial disease control.

Response. For the PD 2/3 analysis, the Agency did not consider the use of EBDCs for control of bacterial diseases on tomatoes. EBDC labels do not list bacterial diseases as one of the pests

the pesticide controls. Thus, the Agency was not aware of a common grower practice of mixing copper and maneb for bacterial disease control on tomatoes. The Agency agrees that applications of EBDCs and copper are efficacious against bacterial diseases and even against populations of bacteria resistant to copper. However, studies have shown that there is no significant difference between applications of chlorothalonil/copper and EBDC/copper for control of copper sensitive bacterial spot. In situations where insensitive isolates are present, chlorothalonil may not be effective. The Agency has data indicating that this could result in yield losses as high as 20 percent to affected tomato growers. This information was considered in the final benefits assessment for the use of EBDCs on tomatoes.

29. *Comment on chlorothalonil as an alternative fungicide for tomatoes.* The Processed Tomato Foundation submitted comments discussing the use of chlorothalonil as an alternative fungicide for California tomato growers. The Processed Tomato Foundation included information and data disagreeing with the Agency's conclusion that chlorothalonil is more efficacious than EBDCs for control of black mold. They concluded that there are no differences in efficacy between the 2 fungicides. The grower group also stated that chlorothalonil is unsuitable for California tomato growers due to crop rotation restrictions on the chlorothalonil label. Fields treated with chlorothalonil cannot be rotated with crops not listed on the chlorothalonil label.

Response. From a review of the data submitted by the Processed Tomato Foundation, the Agency agrees that there is no difference in efficacy between chlorothalonil and EBDCs for control of black mold. This new information was included in the final benefits assessment.

The Agency is aware that crop rotation restrictions on the chlorothalonil label may interfere with crop rotations practiced by California tomato growers. However, data were not submitted by the commenters for the Agency to determine what typical crop rotations are commonly practiced on the affected acres. Without these data, the Agency cannot determine what the economic impact of crop rotation restrictions will be to California tomato growers. If growers choose to rotate their tomato fields with crops not listed on the chlorothalonil label, California growers could switch to anilazine without a decrease in efficacy or similar rotational considerations. However, producers would incur an increased cost due to the higher price of anilazine.

30. *Comment on tomato usage surveys.* Pesticide usage surveys on tomatoes were submitted by The California Tomato Growers Association.

Response. The Agency appreciates the information from the California Tomato Growers Association survey. This information helped the Agency to have a better understanding of chemical usage on tomatoes and was considered in the final benefits analysis for tomatoes.

E. Summary

The estimated total benefits for this Final Determination compared to the benefits estimated in the Preliminary Determination are summarized in the following Table 3:

TABLE 3.—ESTIMATED TOTAL BENEFITS OF EBDCs FOR PD 2/3 AND PD 4.

Food crop	Estimated PD 2/3 benefits[1]	Estimated PD 4 benefits[2]	Reason for changes in benefits
Apples	$0.3 -$10.3 million total impacts.	Estimate a $16.7 to $51.8 million loss to society. This represents about 0.5% of U.S. value of production..	(1) Additional captan applications on eastern apple acreage for control of apple diseases. (2) Additional miticide applications on eastern apple acreage due to incompatibility of mineral oil and captan. (3) Additional zinc sprays on northeast apple acreage.
Almonds	Not enough data to quantify; potential impacts expected..	Not enough data to quantify; potential impacts expected..	
Apricot	Not enough data to quantify; minimal impact expected..	Not enough data to quantify; potential impacts expected..	
Asparagus	Not enough data to quantify; potential impacts expected..	Not enough data to quantify; potential impacts expected..	
Bananas	$0.3 million total impacts.	Estimate a $2 to $5 million total producer impact. This represents about 42% of Hawaii and Puerto Rico value of production..	Lack of efficacious registered alternative fungicides for Hawaiian or Puerto Rican banana growers.
Barley	$0.3 to $2.1 million total impacts.	Estimate $0.33 to $1.9 million impact. This represents about 0.04 to 0.2% of U.S. value of production..	
Beans, dry	Not separated from succulent beans.	Estimate $0.5 to $1.6 million impact. This represents about 0.3% of U.S. value of production..	Crop rotation restrictions with chlorothalonil.
Beans, lima	$0.7 million total impacts.	Estimate $0.5 million impact.	(1) The price of chlorothalonil has decreased. (2) Crop rotation restrictions with chlorothalonil.
Beans, succulent	$1.9 to $2.1 million total impacts.	Estimate $1.3 to $1.4 million impact. This represents about 0.9% of U.S. value of production..	The price of chlorothalonil has decreased.
Broccoli	No impact expected.	No impact expected.	
Brussels sprouts	No impact expected.	No impact expected.	
Cabbage	No impact expected.	No impact expected.	

TABLE 3.—ESTIMATED TOTAL BENEFITS OF EBDCs FOR PD 2/3 AND PD 4.—Continued

Food crop	Estimated PD 2/3 benefits[1]	Estimated PD 4 benefits[2]	Reason for changes in benefits
Caprifigs	Not enough data to quantify; potential impacts expected..	Not enough data to quantify; potential impacts expected..	
Carrots	$0.13 million total impacts.	Estimate $1.2 million total impacts. This represents less than 1% of the U.S. value of production..	(1) Revised percent-crop treated data due to better usage information. (2) More accurate estimates for fungicide application rates and frequencies on a statewide basis.
Cauliflower	No impact expected.	No impact expected.	
Celery	$1.3 to $3.4 million efficiency impacts.	Estimate $1.3 to $3.4 million total impact to society. This represents about 1.3% of U.S. value of production..	
Collards	Not enough data to quantify; potential impacts expected..	Estimate $5.7 to $13.7 million total impacts to producers for collards (total greens crop value in the primary state (GA) is $48 million) ..	Lack of viable fungicide to control leafspot diseases.
Corn, field (seed)	Not enough data to quantify.	Estimate $1 to $1.5 million total impact to society. This represents less than 2% of the U.S. value of production..	Crop rotation restrictions with chlorothalonil.
Corn, sweet	$2.1 to $2.5 million total impacts.	Estimate $2.1 to $8.6 million total impact. This represents about 1.8% of the U.S. value of production..	(1) Revised percent-crop treated information due to better usage information. (2) More accurate estimates for fungicide application rates and frequencies on a statewide basis.
Cotton	Not enough data to quantify; no impacts expected..	Estimate $27.2 million producer impact. This represents about 0.7% of U.S. value of production..	Lack of viable fungicide to control cotton rust in southwestern cotton growing region.
Crabapple and quince	Not enough data to quantify; no impacts expected..	Not enough data to quantify; potential impacts expected..	
Cranberry	$0.1 million producer impacts.	Estimate $70,000 producer impacts. This represents about 0.05% of U.S. value of production..	
Cucumbers	$4.0 to $4.9 million producer impacts.	Estimate $1.4 to $6.1 million producer impact. This represents about 1 to 4% of the U.S. value of production. Impacts for the western U.S. could not be quantified..	(1) Revised percent-crop treated data due to better usage information. (2) More accurate estimates for fungicide application rates and frequencies on a statewide basis.
Eggplant	Not enough data to quantify; potential impacts expected..	Not enough data to quantify; potential impacts expected..	
Endive	Not enough data to quantify; potential impacts expected..	Not enough data to quantify; potential impacts expected..	
Fennel	Not enough data to quantify; no impacts expected..	Not enough data to quantify; potential impacts expected..	
Grapes	$1 to $3 million total impacts.	Estimate $1.8 to $17.5 million impact to society. This represents 0.1 to 1.2% of U.S. value of production..	(1) Reports of grape processors refusing to accept captan-treated fruit. (2) New grape disease reported in New York controlled by EBDCs.
Kale	Not enough data to quantify; impacts expected..	Estimate $2.1 to $5.0 million total impacts to producers for kale..	Lack of viable, registered fungicide to control leafspot diseases.
Kohlrabi	Not enough data to quantify; impacts expected..	Not enough data to quantify; impacts are likely..	
Lettuce	$40 to $204 million efficiency impacts.	Estimate $40 to $204 million impacts. This represents about 4.0 to 20% of U.S. value of production..	
Melons (cantaloupe, casaba, crenshaw, honeydew, and watermelon).	$0.3 million total impacts for cantaloupe, casaba, crenshaw, and honeydew. $0.8 million producer impacts for watermelon..	$0.98 to $4.9 million producer impacts for cantaloupe, casaba melon, crenshaw melon, honeydew, and watermelon combined. This represents less than 1% of U.S. value of production. Impacts for the western U.S. could not be quantified..	Revised percent-crop treated information due to better usage information.
Mustard greens	Not enough data to quantify; impacts expected..	Estimate $4.1 to $9.7 million total impacts to producers for mustard greens, and turnip greens combined..	Lack of viable fungicide to control leafspot diseases.
Nectarines	Negligible rise in impacts.	Estimate $10,000 impact.	
Oats	$0.1 to $0.5 million producer impacts for oats rye..	Estimate $3.8 to $25 million impact. The $25 million represents about 4.5% of the U.S. value of production..	Previously resistant oat varieties now susceptible to crown rust.

TABLE 3.—ESTIMATED TOTAL BENEFITS OF EBDCs FOR PD 2/3 AND PD 4.—Continued

Food crop	Estimated PD 2/3 benefits[1]	Estimated PD 4 benefits[2]	Reason for changes in benefits
Onions	$6.5 million producer impacts.	Estimate $4.2 to $5.5 million impact. This represents about 1% of the U.S. value of production.	(1) Revised percent-crop treated data due to better usage information. (2) More accurate estimates for fungicide application rates and frequencies on a statewide basis.
Papaya	Not enough data to quantify; no impacts expected.	Estimate $0.24 to $7.9 million producer impacts. This represents about 54% of the U.S. value of production.	Scalding (browning of papaya fruit) occurs when chlorothalonil-treated fruit are treated for export from Hawaii.
Peaches	<$15,000 total impacts.	Estimate $10,000 impact.	
Pears	Not enough data to quantify; minimal impacts expected.	Estimate $300,000 impact. This represents less than 1% of the U.S. value of production.	Increase in cost and number of applications of the alternative fungicide ziram.
Peanuts	$2.4 million total impacts.	Estimate $9.1 million producer impacts. This represent about 6% of the U.S. value of production.	(1) Additional fungicide applications are needed to control Sclerotinia blight due to applications of chlorothalonil. (2) Additional manganese applications are needed in North Carolina and Virginia.
Pecan	Not enough data to quantify; minimal impacts expected.	Not enough data to quantify; potential impacts expected.	
Peppers	$49 to $98 million efficiency impacts.	Estimate $80 to $85 million total impact. This represents 33 to 35% of the 1989 U.S. value of production.	(1) Lack of alternatives for control of bacterial spot. (2) More accurate estimates for fungicide application rates and frequencies.
Pineapple	Not enough data to quantify; potential impacts expected.	Not enough data to quantify; potential impacts expected.	
Potatoes	$0.4 million producer impacts.	Estimate $40.4 million total impact. Impacts from chlorothalonil crop rotation restrictions not included in this estimate. The total impact estimate represents about 2% of the U.S. value of production.	(1) Equal efficacy of chlorothalonil and EBDCs. (2) Crop rotation restrictions with chlorothalonil. (3) Use of anilazine as an alternative fungicide to both chlorothalonil or EBDCs for the control of early blight.
Pumpkins	$77,000 total impacts.	Estimate $139,000 to $706,000 impact to eastern pumpkin production. Impacts for the western U.S. could not be quantified (total crop value undetermined).	(1) Revised percent-crop treated information due to better usage information. (2) More accurate estimates for fungicide application rates and frequencies on a statewide basis.
Rhubarb	Not enough data to quantify; no impacts expected.	Not enough data to quantify; potential impacts expected.	
Rye	$0.1 to $0.5 million total impacts for oats rye combined.	Estimate $10,000 to $60,000 impact. This represents about 0.03 to 0.2% of the U.S. value of production.	
Spinach	$19 to $27.5 million total impacts.	Estimate $5 to $27.5 million producer impact. This represents about 50% of the U.S. value of production.	More accurate estimates for fungicide application rates and usage.
Squash	$3.4 to $4.8 million total impacts.	Estimate $271,000 to $810,000 total impacts to eastern squash production. This figure represents less than 1% of the U.S. value of production. Impacts for the western U.S. could not be quantified.	(1) The price of chlorothalonil has decreased. (2) More accurate estimates for application rates and frequencies. (3) Refined projections for the areas of impacts.
Sugar beet	Not enough data to quantify; potential impacts expected.	Not enough data to quantify; potential impacts expected.	
Tomatoes	$0.1 million total impacts.	Estimate $32 to $45 million impacts. This represents about 3% of the U.S. value of production.	(1) Crop rotation restrictions for the use of chlorothalonil on California tomato acreage. (2) Possible lack of control of bacterial leaf spot. (3) Decrease in efficacy for control of bacterial speck. (4) Equal efficacy between anilazine, chlorothalonil, and EBDCs for control of black mold.
Turnip greens	Not enough data to quantify; impacts expected.	Estimate $3.2 to $7.6 million total impacts to society for turnip greens.	Lack viable fungicide to control leafspot diseases.

TABLE 3.—ESTIMATED TOTAL BENEFITS OF EBDCS FOR PD 2/3 AND PD 4.—Continued

Food crop	Estimated PD 2/3 benefits[1]	Estimated PD 4 benefits[2]	Reason for changes in benefits
Wheat	$1.6 to $11.7 million total impacts	Estimate $1.7 to $10 million impact. This represents about 0.03 to 0.1% of U.S. value production.	
Commercial Ornamentals	Impacts expected	Estimate $315,000 impact	
Turfgrass	$14,000 total impact	Estimate $10,000 impact	

[1]Total Benefits = producer revenue impacts + producer cost impacts + consumer impacts.
[2]If only producer impacts are given, then the Agency was not able to adequately quantify consumer impact estimates for the given site. Potential consumer impacts may occur.

VI. Comments of the Scientific Advisory Panel, Secretary of Agriculture and Other Parties

As required under sections 6 and 25 of FIFRA, the Agency provided its Preliminary Notice of Determination and Technical Support Document to the Scientific Advisory Panel and the Secretary of Agriculture, respectively, for their comments, which are presented below.

A. Comments of the Scientific Advisory Panel -May 15, 1990

EPA presented its preliminary determination on the EBDCs at a public meeting of the Scientific Advisory Panel held in Arlington, Virginia on May 15, 1990. The Panel issued its response in a written report of May 31, 1990. The Panel's report is reproduced below in its entirety:

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel --A Set of Scientific Issues Being Considered by the Agency in Connection with the Special Review of Ethylene Bisdithiocarbamate (EBDC) Pesticides Including Ethylene Thiourea (ETU) as a Category B_2 Carcinogen.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) reviewed a set of scientific issues considered by the Environmental Protection Agency (EPA) in connection with the Special Review of Ethylene Bisdithiocarbamate (EBDC) pesticides including Ethylene Thiourea (ETU) as a Category B_2 Carcinogen. The review was conducted in an open meeting held in Arlington, Virginia, on May 15, 1990. Panel members present for the review were Dr. James Tiedje, Dr. Robert Anthony, Dr. Edward Bresnick, Dr. Mont Juchau, Dr. Peter Magee, and Dr. John Wilson. In addition, Dr. Charles Capen of Ohio State University and Dr. Ernest McConnell of Raleigh, NC served as Special Government Employees, and Dr. Richard Griesemer of the National Institute of Environmental Health Sciences served as an Agency representative on the Panel.

Public notice of the meeting was published in the **Federal Register** on April 13, 1990 (55 FR 13951).

Oral Statements were received from (1) the EBDC/ETU Task Force comprised of: Dr. Robert H. Larkin (E.I. DuPont de Nemours & Company), Dr. Kenny S. Crump (Clement Associates, Inc.), Dr. W. Gary Flamm (Science Regulatory Services International), and Drs. Harvey E. Scribner and Ping Kwong (Peter) Chan (Rohm and Haas Co.); (2) Derl I. Derr (International Apple Institute); (3) Dr. John Simons (JMS Flower Farms, Inc.); (4) Ron Walker (National Potato Council); and (5) Dr. James Wilson (American Industrial Health Council).

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency, the Panel unanimously submits the following report.

Report of Panel Recommendations
General Comments

1The Panel wishes to acknowledge and commend the Agency for the fine manner in which the content of the reports was assembled and for the clear organization of its presentations.

Issue No. 1. Does the Panel agree with the Agency's intent to use the results of the EBDC/ETU Market Basket Survey as a primary basis for its dietary risk assessment in the EBDC PD 4; and with the Agency's intent to use the dietary exposure assessment described in the PD 2/3 for those crops for which market basket data or other appropriate data are not submitted?

Panel response. The Panel supports the Agency's intent to use the results of the EBDC/ETU Market Basket Survey as a primary basis for its dietary risk assessment in the EBDC PD 4. The Panel also supports the intent to use the dietary exposure assessment described in the PD 2/3 for those crops for which market basket data or other appropriate data are not submitted. The Panel reminds the Agency, however, that market basket survey data for this purpose can only be interpreted if the chemical use pattern on each crop surveyed has not changed, or if it has changed, it can be estimated. Both the EPA and the registrants involved appear to support these intents; no serious objections have been raised to date. However, the Panel encourages further refinement of the methodology described, particularly as such refinements would relate to considerations in selection of products for testing, more reliable estimates for processing losses, and other losses that occur between the market basket and the dinner table.

Issue No. 2. Does the Panel agree with the Agency's intent to use the average residue levels, rather than 95th percentile or maximum residues from the EBDC/ETU Market Basket Survey in its carcinogenic dietary risk assessment for the EBDC PD 4?

Panel response. It is the Agency's intent to use average residue levels as a general rule, the Panel believes that the use of dietary residue levels for dietary risk assessment calculations should be comparable to the health effect which is of concern. The use of average residue levels may be appropriate for chemicals whose effect is the result of repeated or chronic exposures (i.e., chronic nephritis, organ weight changes, cancer, etc.). Conversely, for chemicals which elicit significant acute effects (i.e., cholinesterase inhibition, developmental effects, etc.), use of 95th percentile or higher estimates of residue levels may be warranted.

The Panel is concerned that groundwater exposure information seems to be lagging significantly behind the dietary exposure and yet it's not clear that exposure in drinking water should be substantially less than from diet since leaching of this compound is known.

In view of the high toxicity of EBDC compounds to aquatic organisms, and the potential effects on reproduction in birds, the Panel urges the Agency to thoroughly investigate the potential ecological effects of EBDC compounds and ETU in aquatic and terrestrial systems, including their environmental fate, acute and chronic effects, if any, on aquatic and terrestrial organisms, and the potential for secondary poisoning in predatory or scavenging animals.

Issue No. 3. Based upon the Agency's Cancer Assessment Guidelines of 1986, does the Panel agree with the weight of evidence evaluation and carcinogenic classification of ETU for this data set?

Panel response. The Panel agrees with the classification of the EBDC's (and ETU) as a Class B_2 carcinogen. This conclusion is based upon (a) the appearance of both adenomas and carcinomas in two species, the mouse (2 strains) and the rat, (b) the appearance of tumors in two different tissues (not in the same animal), i.e., in liver of the mouse and in the thyroid of the rat, and (c) the increasing incidence of carcinomas, both in the liver and thyroid of the mouse and rat, respectively, in a dose dependent manner. The Panel believes that the Agency's approach to calculating the Q_1^* using the high dose-mouse liver tumor data is appropriate, i.e., discarding these results to better fit a model would be inappropriate. However, the Panel recommends that Q_1^* calculations be conducted with data obtained from the different tumor model systems where available and the values be compared. Specifically, a Q_1^* should be calculated using

the thyroid tumor data in the rat as well as the liver tumor results in the mouse.

The Agency should make use of all available relevant data in its risk extrapolations to humans. The relevance of high dose mouse liver data compared to low dose level risk extrapolations must be carefully evaluated in the perinatal paradigm recently submitted to the Agency by the National Toxicology Program (NTP).

The Panel has evaluated the information on the potential genotoxicity of the EBDC's and ETU. The Panel concluded that the evidence for genotoxicity was equivocal both in prokaryotic and eukaryotic test systems.

Issue No. 4. Do the current EPA Cancer Risk Assessment Guidelines adequately provide for classification of chemical carcinogens such as ETU? If not, does the Panel have any specific comments which would assist the Agency in categorizing the carcinogenic effects of ETU?

Panel response. Current EPA Cancer Risk Assessment Guidelines (51 FR 33992–34054, September 24, 1986) provide for the use of all relevant supportive information in the evaluation of the overall weight of evidence, including physiological, biochemical, and toxicological observations. While the "guidelines" recommend the use of other "relevant supportive information" in the carcinogenic classification of a particular chemical, the Agency is encouraged to better use all available evidence in its final determination. For example, the guidelines make several references to hormonal function in interpreting the carcinogenic event(s):

Toxicologic effects other than carcinogenicity (e.g., suppression of the immune system, endocrine disturbances, organ damage) that are relevant to the evaluation of carcinogenicity should be summarized. (pg. 33994) The carcinogenic effects of agents may be influenced by non-physiological responses (such as extensive organ damage, radical disruption of hormonal function, ...) induced in the model systems. (pg. 33995)

Interpretation of animal studies is aided by the review of target organ toxicity and other effects (e.g., changes in the immune and endocrine systems) that may be noted in prechronic or other toxicologic studies. (pg. 33995)

Such evidence, where available, should be incorporated to the fullest extent possible in the Agency's weight-of-the-evidence evaluation and carcinogenic classification. A more thoughtful use of such data by the Agency, as broadly interpreted in the guidelines, would permit a more flexible approach to carcinogenic classifications.

Although the cancer risk assessment guidelines accommodate the consideration of hormonal effects in the etiology of certain cancer responses, the incorporation of such approaches in the Agency's cancer risk assessment of EBDC/ETU should be scrutinized carefully and weighed against the present method(s) of risk extrapolation.

Issue No. 5. Considering the available biological evidence on ETU, does the Panel believe the evidence is indicative of a threshold response or a non-threshold response for thyroid tumors? Does the Panel have any specific comments regarding the mechanisms for the carcinogenic effects observed in the rodent bioassay for ETU with regard to threshold versus non-threshold phenomena for the thyroid?

Panel response. Ethylene Thiourea is a potent goitrogenic compound that at high doses causes profound disruption in thyroid hormone economy and marked elevations in serum thyroid stimulating hormone (TSH). When administered over the lifetime to a highly sensitive species, such as the laboratory rat, the sustained stimulation appears to promote an increased incidence of thyroid follicular cell tumors by a secondary (indirect) mechanism that the evidence suggests is mediated by TSH. A similar increased incidence of thyroid tumors also has been reported in laboratory rats following physiologic perturbations (iodine deficiency or partial thyroidectomy) in the complete absence of xenobiotics. With some other chemicals that induce thyroid tumors by a disruption of endocrine function the proliferative response of follicular cells is abrogated by the exogenous administration of thyroid hormone (usually thyroxine). Doses of the chemical that fail to disrupt thyroid hormone economy and increase TSH are not associated with the development of thyroid tumors under the conditions of the studies. The promoting effects of ETU could be investigated further using an initiation-promotion model such as the one developed by Hiasa, et al. (Carcinogenesis 3:1187, 1982). Studies could also be designed to demonstrate a threshold effect of the chemical and to learn whether exogenous thyroxine will block the development of thyroid tumors.

The correlation between the development of thyroid tumors in rats and liver tumors in the mouse is uncertain. It is the Panel's determination that there are insufficient data to suggest a threshold response in the mouse following administration of ETU.

Issue No. 6. Does the Panel have any specific comments regarding thyroid/pituitary mechanisms where there is experimental animal evidence that multiple organs are involved in the manifestation of tumors, specifically thyroid and liver neoplasia, particularly at doses where there is clear evidence of a radical disruption of hormonal function?

Panel response. The Panel believes that the EBDCs and/or ETU significantly inhibited thyroid peroxidase, decreasing the production of tetraiodothyronine (T_4) and triiodothyronine (T_3). The thyroid hormones (primarily T_3) would ordinarily inhibit, by a negative feedback mechanism, anterior pituitary elaboration of thyrotropin (TSH), which is responsible for the stimulation of thyroid cells to produce more thyroid hormone. In the absence of normal blood levels of thyroid hormones as a result of inhibition of the peroxidase, TSH levels remain elevated and compensatory thyroid follicular cell hypertrophy and hyperplasia result. The Panel believes that a clonal expansion of an initiated cell(s), under the influence of a sustained elevation in TSH, subsequently gives rise to the increased incidence of follicular cell adenomas and carcinomas in the thyroid. However, the Panel was unable to formulate a plausible explanation for the formation of liver tumors as a result of elevated levels of TSH or decreased circulating levels of thyroid hormones.

Issue No. 7. Are the rat and/or mouse appropriate animal models for studying thyroid inhibiting chemical agents with regard to thyroid neoplasia and their predictability for man? How can such laboratory animals be maximized to evaluate the effects of thyroid inhibiting compounds and their relation to a similar response in humans?

Panel response. Because of their small size and short life spans, rats, mice and other rodents are virtually the only species that are used for carcinogenicity bioassay. If a chemical is found to induce thyroid tumors it may prove to have antithyroid activity with simulation of TSH production. In such cases, further studies with the compound in other species may prove valuable in elucidating mechanisms and in investigating extrapolation to man. ETU is such a chemical. The mouse, rat and rabbit demonstrate changes of interest in certain organs (thyroid, liver, pituitary). The chemical in question exerts a pharmacologic action in animals, which is similar to analogs (PTU) in man. Epidemiologic studies from man are valuable but delay action on ETU regulation. Thus, studies to demonstrate disruption in thyroid hormone economy; comparative sensitivity to inhibition of thyroperoxidase, for example, between rat, dog, monkey (by ETU), would be extremely valuable in extrapolations to humans.

Although the paradigm tested by NTP involving perinatal exposures failed to provide convincing evidence of increased sensitivity in either rats or mice, such paradigms warrant further evaluation as they may provide additional compound-related effects in developing infants. Therefore, the data generated should be carefully examined by the Agency.

The surface area *vs.* body weight normalization for scaling of effect and dose data from animal to man was addressed from both perspectives. The Panel considers the Agency's conversions based on surface area to body weight relationships as defensible, because they reflect differences in metabolic rates per unit weight in large versus small mammals and excretion rates of chemicals. Plasma concentrations of ETU and metabolites offer a solution to this problem as it aids assessment of chemical residence time and exposure of organs at risk. While half life data is useful for comparison of exposure, clearance is a more fundamental indicator of ETU exposure. Each species, including man, may have metabolic route and rate differences which affect both the site and extent of toxicity. Much more pharmacokinetic data are needed to facilitate interspecies comparisons.

The information provided to the Panel elicits concern for effects in addition to the carcinogenic effects observed. For example, an increase in TSH and decrease in thyroid hormone was seen as well as possible thyroid effects on neural and osseous structures. In humans, relative hypothyroidism occurring shortly after birth

during periods of rapid brain development has severe effects on brain growth and function in the young child. Other pituitary hormones (e.g., growth hormone) and hormones such as ACH (adrenocortical hormone) should be measured after administration of ETU as they may exert permissive action on the observed ETU toxicity or offer additional sites of toxicity. At a minimum they will aid investigation of mechanism of effect. For example, EBDC pesticides such as maneb and mancozeb contain zinc and/or manganese. Chronic manganese toxicity in humans but not rodents is characterized by Parkinson's-type symptoms due to irreversible destruction of those brain tissues that normally contain neuromelanin. Whether manganese is biologically available from the metabolism of such EBDCs is unknown.

For The Chairman:
Certified as an accurate report of Findings:

Robert B. Jaeger
Designated Federal Official
FIFRA Scientific Advisory Panel
Date: May 31, 1990

Agency Response: The Agency's response to the toxicological issues raised by the SAP comments has already been noted in Unit II of this Notice. In brief, the Agency has determined that ETU is a Class B_2 carcinogen based upon data showing the occurrence of adenomas and carcinomas in both mice and rats, the occurrence of tumors in the liver of the mouse and thyroid of the rat, and the increased incidence of carcinomas in the liver and thyroid of the mouse and rat, respectively, in a dose dependent manner.

A detailed description of the Agency's rationale for selecting the mouse for the purpose of calculating risk can be found in Unit II of this document.

The Agency's approach to calculating the Q_1^*, as proposed in the Health Effects Division Peer Review document dated September 26, 1991 (Ref. 9), was also reaffirmed as a result of the second SAP hearing held on September 18, 1991.

The Panel also expressed concern about groundwater contamination and potential ecological effects of EBDC compounds and ETU. Data have been required as a part of the Registration Standards which will address these concerns.

B. Public Comments to the SAP

The Rohm and Haas Company has submitted written responses to comments made by members of the Science Advisory Panel (SAP) during the May 15, 1990 SAP meeting on the EBDC's and ETU. The SAP suggested that the anti-thyroid effects of ETU and possible effects on neural and osseous structures might pose a potential hazard on early brain development in humans. Rohm and Haas believes that this concern is unfounded based on available data. Data show that the rat is the most sensitive species in terms of anti-thyroid effects and that the half-life of circulating thyroid hormones in rats is shorter than in humans. In Rohm and Haas' view, this provides a mechanistic base to support that humans are less sensitive to anti-thyroid effects.

Also, anti-thyroid effects and the possible secondary effects on neural and osseous structures occurred only when high doses of ETU were given to animals. Therefore, Rohm and Haas concludes that low dietary exposure to children resulting from ETU does not pose a hazard.

Response. The Agency is in general agreement with regard to Rohm and Haas' statements that (1) the (male) rat is the most sensitive species, (2) the half-life of circulating thyroid hormone in rats is shorter than in humans, and (3) that this provides a mechanistic base to support the argument that humans are less sensitive to anti-thyroid effects than rats.

In the PD 2/3, developmental risk from dietary exposure to ETU from consumption of food treated with EBDC pesticides was estimated by comparing the average exposure estimates of each EBDC chemical (mg/kg body wt./day) to the NOEL from a rat teratology study. The comparison between exposure and the NOEL is expressed as a Margin-of-Exposure (MOE). An acute dietary exposure analysis with anticipated ETU residues from each EBDC chemical was used to estimate the distribution of single-day exposure for certain population subgroups, which in this case are females of child bearing age. The analysis assumes that ETU levels occur uniformly within each food commodity at the anticipated residue levels. Margins-of-exposure for consumers of foods treated with EBDCs and presumed to contain ETU residues ranged from 770 for maneb to 5,000 for mancozeb.

With regard to the neuro-behavioral effects tested for in the NTP rat study which included both *in utero* and *non-in utero* exposure, data reveal that the Margin-of-Safey (MOS) ranges from 330 for non-nursing infants to 7,894 for the general population for the lowest dose tested of 0.45 mg/kg/day. Analysis of the data indicated no apparent neurobehavioral effects for the parameters tested at any dose level at the end of 9 months or 2 years. The Agency has based its reference dose (RfD) on a 2-year chronic feeding rat study conducted by Graham (1975). The RfD is based on the lowest dose tested which was the lowest effect level. The effect observed at the lowest dose tested of 5.0 ppm (0.25 mg/kg/day) was thyroid hyperplasia. The range of doses in the NTP chronic study was from 9 to 90 ppm (0.45 to 4.5 mg/kg/day) for perinatal administration and from 25 to 250 ppm (1.24 to 12.5 mg/kg/day) for adult exposure. The thyroid gland was clearly affected at all doses tested without an adverse effect on neurobehavior.

The registrant appears to imply that high doses of ETU result in anti-thyroid effects with secondary effects upon neural and osseous structures. It should be pointed out that the available data for rats and mice indicate that secondary effects on neural and osseous structures do not necessarily result from inhibition of the thyroid gland since thyroid inhibition in mice does not result in developmental effects. Additionally, in the rat, doses as low as 5.0 ppm have been shown to result in thyroid inhibition in the most sensitive species, thereby challenging the phrase that anti-thyroid effects occurred only when high doses of ETU were given to animals.

The SAP raised a concern about potential adverse neurotoxic effects due to manganese derived from EBDC residues. Rohm and Haas claims that no potential adverse health effects exist from manganese added to the human diet as a result of the use of EBDC fungicides.

The Agency has estimated manganese dietary exposure from maneb and mancozeb as a percent of the daily diet. The daily diet generally contains 2 to 5 mg of manganese, which is an amount sufficient to meet human requirements. In order to maintain a positive manganese balance, daily dietary intakes of 0.2 to 0.3 mg manganese per kilogram body weight have been recommended for children. The combined total manganese exposure from both mancozeb and maneb to the daily dietary intake for manganese was estimated for adults (0.00221 mg/kg/day), children 1 to 6 years of age (0.0062 mg/kg/day), and non-nursing infants (0.0050 mg/kg/day). These values represent 0.89, 0.50, and 0.60 percent of the recommended daily intake, respectively. The exposure estimates were based on the same exposure data for mancozeb and maneb that were used in estimating the dietary risk for carcinogenicity from ETU for these two fungicides in the PD 2/3. Therefore, the Agency agrees with the registrant that no potential adverse health effect exists from manganese added to the human diet as a result of the use of EBDC fungicides mancozeb and maneb.

C. Comments of the Scientific Advisory Panel -September 18, 1991

Due to deliberation within the HED Peer Review Committee, the Agency requested comments from the Panel relative to the inclusion of the 33/100 ppm (low) dose group for risk characterization. EPA presented this issue on the EBDCs at a public meeting of the Scientific Advisory Panel held in Arlington, Virginia on September 18, 1991. The Panel issued its response in a written report of October 2, 1991. The Panel's report is reproduced below in its entirety:

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel --A Set of Scientific Issues Being Considered by the Agency in Connection with a Dose-Response Analysis for Ethylene Thiourea (ETU).

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of a set of scientific issues regarding the Environmental Protection Agency Peer Review Committee's review of a dose-response risk assessment for the carcinogenic effects of Ethylene Thiourea (ETU) in rats and mice. The review was conducted in an open meeting held in Arlington, Virginia, on September 18, 1991. Panel members present for the review were Dr. Edward Bresnick (Chairman), Dr. Mont Juchau and Dr. Peter Magee (Dr. Curtis Travis was recused for the proceedings). In addition, Dr. Edmund Crouch of Cambridge Environmental, Inc., Dr. Richard Griesemer and Dr. Christopher Portier of the National Institute of Environmental Health Sciences, served as Agency representatives; and Dr. Dale Hattis of Clark University, and Dr. Ernest McConnell of Raleigh, NC served as Special Government Employees on the Panel.

Public notice of the meeting was published in two **Federal Registers** on Friday, August 23, 1991 (56 FR 41843) and Friday, September 13, 1991 (56 FR 46616).

Oral presentations were made by the EBDC/ETU Task Force: Mr. Edward Ruckert, Dr. Gary Flamm, Dr. Thomas Starr, Dr. Robert Sielken, Jr., and Dr. Kenny Crump.

Written comments were received from the EBDC/ETU Task Force members: Atochem North America, Inc., BASF Corporation, E.I. du Pont de Nemours and Company, and Rohm and Haas Company.

Note: Prior to the Panel's discussion and deliberations on ETU, an announcement was made that the ETU Task Force had expressed concern over a possible conflict of interest regarding Dr. Travis. Although discussion between the Designated Federal Official (DFO, FIFRA SAP) and the EPA Office of General Counsel (OGC Ethics Office), prior to the afternoon discussion of ETU, failed to substantiate the alleged conflict of interest, Dr. Travis informed both the DFO and the Chairman of the FIFRA SAP that he recused himself from all proceedings on ETU before the Panel, both public and private discussions of the issues. This does not reflect any real conflict of interest regarding the matter before the Panel, but rather the belief by Dr. Travis that (1) there were several other experts on the Panel who were equally capable of discussing the issues on ETU, (2) at such late notice, it gave the "appearance" of a problem, (3) when there is no benefit to be gained there should be no risks taken, and (4) the matter deserved more detailed written response by OGC to verify there is no conflict of interest, and to prevent unnecessarily impugning the reputation and scientific integrity of the FIFRA SAP.

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency, the Panel unanimously submits the following report.

Report of Panel Recommendations

The Agency requested comments from the Panel relative to the Peer Review Committee's recommendations for appropriate use of the 33/100 ppm dose group for risk characterization considering that:

- this group represents several design flaws,
- necessitates the exclusion of the highest dose group (1000 ppm) because of the lack of (linearized multistage) model fit,
- but provides some valid and significant biological data at a lower exposure level and thus may be more relevant for low dose extrapolation than data points with high exposure and nearly saturated tumor response. Specifically, the Panel was asked to provide, to the extent possible, the scientific arguments for either inclusion or exclusion of the low dose data point in the dose response assessment.

Panel response. The Panel is of the opinion that adequate data should always be included unless there is strong reason to exclude them. In this case, there is a strong reason for the Agency's standard approach which results in the exclusion of the highest dose group since its inclusion was associated with gross distortion of estimates of the probable effects at lower doses when used in the Agency's standard dose-response formula (e.g., linearized multistage model).

The Panel felt strongly that the data from the 33/100 ppm group should be included in the analyses. The arguments for inclusion are:

1. The usual form of the linearized multistage model is probably not statistically appropriate for use in calculating the Q_1^* if all data except the control show over 90 percent rates of cancer.

2. Whole life exposure (the diagonal in the factorial experimental design) is probably most appropriate for utilization for public health purposes.

The principal argument against using the low dose point is potential litter bias, and this appears to have been relatively well addressed in the analyses presented to the Panel.

The Panel noted that the available data would not likely enable the robust detection of an interactive effect between the effects of pre-weaning and post-weaning exposure for the liver cancer endpoint if such an effect were to have been present. Despite the fact that not enough information exists to statistically evaluate the potential for a protective effect of the prenatal exposure, such an effect is not seen in the high dose groups. There is also supporting evidence for this view since no consistent patterns of interaction were observed in other tissues.

The Panel was informed during the meeting that some pharmacokinetic data exist for ETU. The Panel suggested that the analysis could be improved by using (and if necessary gathering) pharmacokinetic data which would allow expression of the results in terms of the internal dose of ETU [e.g., area under a curve (AUC) of concentration *vs.* time following comparable oral exposures, if possible based on experiments in subchronically dosed animals]. Pharmacodynamic data (e.g., the dynamics of thyroid hormone changes and cell proliferation responses in the thyroid and liver) may also aid in producing an improved estimation of low dose risks.

For The Chairman:

Certified as an accurate report of Findings:

Robert B. Jaeger
Designated Federal Official
FIFRA Scientific Advisory Panel
Date: October 2, 1991

Agency Response. After further analysis and consideration of the data sets, the Agency still believes that the 0.11 Q_1^* estimate should be used in the risk assessment because:

(1) The method of estimating the 0.11 Q_1^* is consistent with the recommendation of HED's Peer Review Committee as well as Agency policy.

(2) Even though the full data set of the diagonal yields a slightly greater Q_1^* than the pooled data set, the increased dose does not appear to be biologically or numerically meaningful. To illustrate this point, a sensitivity analysis of the doses in the diagonal data set was performed. It was found that, among other things, theoretically decreasing the number of animals manifesting tumors by only one animal in the high dose group resulted in an unacceptable fit of the data to the linearized multistage model. This would then lead to the high dose (i.e., 1000 ppm) being dropped from the estimations resulting in a statistically acceptable fit of the remaining doses to the model and a Q_1^* of 0.11.

D. Comments of the Secretary of Agriculture

The comments of the U.S. Department of Agriculture in response to the Notice of Preliminary Determination, Draft Notice of Intent to Cancel and the Technical Support Document, dated March 20, 1990, are printed in full below:

Mr. Douglas D. Campt
Office of Pesticide Programs
U.S. Environmental Protection Agency
401 M Street, SW,
Washington, DC 20460

Dear Mr. Campt:

This is the Department of Agriculture's

preliminary response to the draft notice of intent to cancel pesticide products containing the ethylene bisdithiocarbamates (EBDCs). The integrated management approach that has always been used in disease control efforts requires the availability of a variety of pest control chemicals. With this in mind, the USDA is coordinating an assessment of the use of fungicides in agricultural production. We will be furnishing you two separate reports on the major fungicides in the near future. You should receive our draft biological assessment within the next several weeks. EPA staff have been present at all the meetings of the team and have had full access to preliminary data. You will also receive, within the next 3 months, a report entitled "Implications of the Use of Fungicides in Agriculture." This is an overview report and will discuss among other things potential for fungal induced hazards and the potential impact on the diet from an inadequate food supply.

In our opinion, there is no compelling evidence of chronic toxicity in humans resulting from use of EBDC fungicides. The available residue data indicate a high percent of samples contain no EBDC or ETU residues. There are no substantiated data indicating EBDC residues present environmental problems. We are particularly concerned about the loss of many minor uses, some of which the registrants have voluntarily withdrawn. If necessary, various measures can be taken, such as lowering tolerances or increasing the pre-harvest interval. In view of these considerations, the Department urges the Agency to reevaluate the benefits that result from the many uses of these valuable fungicides.

The Department applauds the EPA decision to wait for the market basket survey results before making a final decision, which we understand will not be made until 1991. Available information on residues from the Food and Drug Administration as well as State agencies gives every indication that residue levels are much lower than those estimated by the Agency. Since a great deal of data currently exist on these fungicides, we strongly recommend that the Agency utilize the scientifically valid figures rather than base a position on estimated values that appear substantially greater than those actually measured. In view of the importance of the EBDCs in agricultural production, a reassessment of residue levels seems appropriate. The USDA would be pleased to cooperate with EPA in arranging a panel of experts from State, Federal, and academic institutions that would determine in the most scientific manner possible what residue levels are appropriate in this risk assessment.

We are concerned that the resistance factor was neither adequately addressed nor was sufficient consideration given to the ramifications of the loss of the EBDCs. A copy of our report on "Fungicide Resistance in the United States" was furnished to the Agency through Dr. E. N. Pelletier in June 1989. Another copy is attached for your use. A variety of fungicides with different modes of action are essential for the control of plant diseases. The multisite mode of action makes EBDCs extremely valuable in pest management programs. The development of new fungicides has moved towards compounds that are more specific in their modes of action. A consequence of high specificity has been the development of fungal resistance to these compounds; and thus, the older protectant fungicides (such as the EBDCs) must be used as companions to reduce the chance of fungal resistance problems. Without the use of EBDCs, overall resistance losses might initially be less than 50 percent; however, losses by individual producers could approach 100 percent. In addition, failure to control new races of pathogens will accelerate disease control problems in subsequent growing seasons and impact more producers.

The EBDC fungicides play a major role in the production of fruits and vegetables. A recent report by the National Academy of Sciences recommended that Americans include several servings of fruits and vegetables in their daily diet. A number of government agencies have made similar recommendations. Loss of the EBDCs would have a significant impact on the availability of this produce. Varieties, their cost and longevity (storage and shipping), would be severely impacted. In addition, failure to control fungal diseases can lead to food contaminated with hazardous fungal products and plant defense chemicals.

In determining the impacts of cancelling the EBDCs, the Agency fails to consider regional impacts. In humid areas of the country, disease pressures on production are generally greater and more control measures are required. The Department feels that agriculture should be maintained throughout the United States and not confined, due to regulatory restrictions on pest control materials, to segments of the country. In addition, the increased costs of alternatives to the EBDCs will have many ramifications ranging from reductions in the farmers' profits to increased costs to the consumers.

The number of crops that will be affected by the proposed regulatory action is lengthy. We would like to make several points in relation to some of these.

- Downey mildew is often a serious disease in California lettuce production. Maneb, or maneb in combination with metalaxyl (to avoid buildup of resistance to metalaxyl), has been used to effectively control the disease.
- In the absence of host plant resistance to disease, maneb is critical in spinach production. The only other registered materials are phytotoxic.
- EBDCs are primary fungicides in the production of tomatoes in California and Florida. In addition to controlling fungal diseases, an EBDC fungicide in combination with a copper fungicide is the only available control of bacterial diseases on tomatoes as well as peppers in Florida.
- EBDCs are important in control of both early and late blights in potatoes. Consideration must be given to the low profit margins in potato production since alternatives, if available, would probably negate profits.
- A number of key crops which should be included in the market basket survey to determine more accurately dietary exposure are not. These are spinach, leaf lettuce, carrots, succulent beans, and peaches. Not only do these crops represent important registration needs, but data from these crops would be extrapolated to other crops including snapbeans, lima beans, turnips, celery, endive, fennel, rhubarb, collards, kale, and mustard greens to support continued registration.
- Mancozeb and metiram have been applied extensively in apple disease management programs at 40 to 50 percent below label rates in many mid-Atlantic orchards. Their use in combination with newer, specific fungicides is extremely effective in preventing the development of disease resistance.
- EBDCs have played an important role in the production of marketable mushrooms. The loss of zineb leaves mushrooms without a registered EBDC fungicide and lowers the possibility of meeting the blemish-free quality of standard.

We hope these comments are useful to you in your deliberations, and hope that you will make every effort to be sensitive to the needs of agriculture and the American consumer.

Sincerely,
Charles L. Smith
Coordinator, Pesticides and Pesticide Assessment

Response. EPA has considered the benefits information provided by the USDA. This information is referred to throughout Unit V of this Notice which summarizes EPA's benefits assessment and evaluation of comments and additional data received in response to the PD 2/3.

E. SAP and USDA waiver of further review

Recently, for the reasons discussed below, the Agency requested that the SAP and USDA waive further review of this Notice of Intent to Cancel. When the Agency proposed its action in December, 1989, the SAP and USDA were each sent a Draft Notice of Intent to Cancel 45 of 55 food uses of the EBDC fungicides as well as other uses.

In its Final Determination, the Agency is requiring that certain modifications be made to registrations of the 10 crop uses which the Agency originally proposed to retain. These changes are consistent with those requested by the ETU Task Force or data currently available to support the particular use. The changes include setting the maximum number of applications per season, modifying preharvest intervals, modifying application intervals, and/or reducing application rates. The Agency believes that these changes will not affect the efficacy of EBDC fungicides on these uses.

The SAP has waived any further review. USDA recommended minor changes which the Agency adopted for

this Final Determination. The following is the full text of the USDA response:

Mr. Douglas D. Campt
Director
Office of Pesticide Programs (H7501C)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Dear Mr. Campt:

This is in response to your request that the U.S. Department of Agriculture (USDA) waive further review beyond the minor modifications made to registrations proposed to be retained in the draft Notice of Intent to Cancel (NOIC) 45 of the 55 food uses of the EBDC fungicides that the Department received in December 1989. We have reviewed the modifications and believe these changes that include setting maximum number of applications per season, modifying preharvest intervals, modifying application intervals, and/or reducing application rates will not impact the use of these chemicals in current disease management practices. The Department is pleased that the Agency has taken into consideration the regional differences in disease pressure when modifying the registrations.

Thus, in view of our agreement with modifications to the specified registrations and our response to the December 1989 NOIC, USDA waives further review of the NOIC. We would like to reiterate the statements made in our previous response (March 20, 1990) that there is no compelling evidence of chronic toxicity in humans resulting from use of EBDC fungicides, that EBDCs are extremely valuable in pest management programs designed to avoid resistance problems, and that EBDCs play a major role in the production of fruits and vegetables.

In your final determination, we hope you will make every effort to be sensitive to the needs of agriculture and the American consumer.

Sincerely,
Nancy N. Ragsdale
Director
National Agricultural Pesticide Impact Assessment Program

VII. Risk/Benefit Assessment and Initiation of Final Determination Actions

A. Conclusions of the Risk/Benefit Assessment

Based on the information summarized and presented in this Notice, EPA has determined that the uses of the EBDCs as currently registered pose unreasonable dietary and worker risks.

1. *Dietary risks.* EPA has determined that the estimated dietary risks to the overall U.S. population from consumption of EBDC-treated crops exceed the estimated benefits of continued registration. Accordingly, EPA is announcing its intent to cancel all mancozeb, maneb, and metiram products registered for 1 or more of the following 11 uses: apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans, and turnips. Additionally, EPA is announcing its intent to cancel all remaining mancozeb, maneb, and metiram registrations unless the changes to registration to reduce dietary risks required herein are made.

In the Preliminary Determination, the Agency proposed to cancel 45 of the 55 food uses of mancozeb, maneb, and metiram. This action was proposed because the estimated total upper-bound carcinogenic risk resulting from dietary exposure to EBDCs for all 55 food uses (3×10^{-4}) was not outweighed by the benefits ($46 to $75 million in first-year losses to growers (i.e., producer impacts) and $90 to $305 million in losses to society (i.e., efficiency impacts)). The proposed cancellation would have allowed uses with an estimated dietary risk of 3×10^{-6} to continue.

Today, EPA is announcing its intent to cancel EBDC products with 1 or more of the 11 uses listed above. With respect to EBDC products bearing 1 or more of the 45 sites for which the Agency is requiring modifications to lower risk, the Agency is announcing its intent to cancel those products if the required changes are not made. [1] The current estimate of lifetime dietary risk to the overall U.S. population from all 56 sites is 1.8×10^{-5}. The 56 uses represent an estimated $290 to $630 million in benefits. The 11 cancellations and modified registrations involved in this action will reduce estimated lifetime dietary risk to 1.6×10^{-6}. These risks are outweighed by the benefits associated with the 45 remaining uses after considering the required modifications. The estimated individual dietary risks for each of the 56 commodities are discussed in Unit III of this Notice and are listed in Table 1 in Unit III.B. The estimated benefits of EBDCs on individual food commodities are detailed in Unit V of this Notice and are summarized in Table 1 in Unit III.B. of this Notice.

The estimated dietary risks resulting from consumption of EBDC and ETU residues on individual commodities treated with EBDC fungicides ranges from 10^{-10} to 10^{-6}. Although many of the estimated individual risks posed by certain food uses are minimal, EPA believes that the estimated cumulative risk of 10^{-5} from all 56 food uses is unacceptable, even in light of estimated benefits that, in total, range from $290 to $630 million.

In developing the Final Determination, EPA considered the estimated benefits resulting from the EBDC use on each individual commodity and compared those estimated benefits to the estimated risk posed from dietary exposure to the EBDC and ETU residues on that commodity. The availability and toxicity of alternative fungicides was also considered, along with potential risk reduction measures for continued use of the EBDCs. Cost-effectiveness, where applicable, was used as a tool to assist in quantitatively comparing the estimated dietary risks to the estimated benefits.

Alternative fungicides. For each of the 56 food uses, EPA estimated the relative risk (compared to the estimated risk of the EBDCs) and the efficacy of the alternative fungicides. For a number of sites being cancelled (e.g., collards, mustard greens, and spinach), there is no viable alternative fungicide. For sites being cancelled where there are alternative fungicides (i.e., apricots, carrots, celery, nectarines, peaches, rhubarb, and succulent beans), the Agency believes that chlorothalonil is the most likely alternative to EBDCs for control of fungal disease. EPA estimates that switching from EBDCs to chlorothalonil for these sites will reduce risk.

One of the weaknesses in EPA's analysis in comparing the estimated risk of the EBDCs to its alternatives is the differences among the data bases. The two alternatives most likely to be used if the EBDCs were not available are captan (an alternative for apples and grapes) and chlorothalonil. To estimate dietary exposures from captan and chlorothalonil, the Agency relied primarily on Food and Drug Administration (FDA) monitoring data. Dietary exposure estimates for the EBDCs were based on market basket data and field trial data. Exposure estimates based on monitoring data would be expected to be lower than those based on field trial data but higher than those based on market basket data.

Despite this weakness, EPA believes that the conclusions reached in its analysis of the alternatives to the EBDCs and the incremental risks resulting from various shifts in use are valid. Further, EPA believes that cancellation of the EBDCs for apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans, and turnips will not

[1] Because all 55 uses remain on 1 or more registered end-use products (in spite of the technical registrants' September 6, 1989 action to voluntarily delete 42 of the 55 uses from their registrations), EPA has considered all 55 food uses in this Final Determination. Also, it now appears that there are 56 uses of EBDCs (i.e., 11 uses being cancelled and 45 being retained). In the EBDC PD 2/3, dry and succulent beans were listed as 1 site and in the PD 4 they are listed as 2 sites.

result in higher dietary risk due to the shift in fungicide usage to chlorothalonil.

Risk reduction measures. Recognizing the overall importance of the EBDCs as an agricultural fungicide in both the economic benefits it appears to provide and the importance of its role in delaying or preventing resistance of fungal organisms to other pesticides, EPA examined ways of reducing risks to the point where the estimated cumulative benefits of EBDCs outweighed its estimated cumulative risks. Generally, potential risk reduction measures include increasing the preharvest interval, decreasing the number of applications, and/or decreasing the application rate. In the PD 2/3, EPA urged commenters to consider such risk reduction measures and to suggest and support potential modifications in use patterns, along with residue data demonstrating the resulting residue levels of EBDCs and ETU and the efficacy of the altered use pattern. The Agency received such information for only a few sites. The International Apple Institute (IAI) provided field trial data for an alternative use pattern on apples that would require a longer preharvest interval and lower application rate than the currently registered use pattern to significantly reduce the estimated dietary risk for EBDCs and ETU on apples. The Hawaiian Papaya Industry Association growers also submitted data on an altered use pattern. Leafy green growers and food processors submitted preprints of studies to be published on residue and efficacy data for an altered use pattern. Other commenters provided their opinion on risk reduction measures, such as extending the preharvest interval and reducing application rates, for other sites. However, data were generally not submitted to support these measures.

Cost-effectiveness. Cost-Effectiveness (C-E) is a tool used to compare the estimated loss of benefits to society which are associated with the loss of an EBDC use (cost) on a particular site to the estimated reduction in carcinogenic dietary risk of that site (effectiveness). The C-E coefficient is an estimate of the societal cost per cancer case avoided.

EPA estimated C-E coefficients for those sites where estimated benefits were quantified; these estimates are listed in Table 1 in Unit III.B. of this Notice. As discussed in Unit V, the PD 4 estimated benefits include both producer and consumer impacts. The C-E coefficients were then used as a guide to rank the relative importance of the 56 sites. C-E was only used as a guide, and one tool of many, in developing the Final Determination as the Agency recognized the limitations of C-E in the EBDC analysis. First, all 56 sites were not included in the ranking because cost-effectiveness was unavailable for certain sites. Second, where C-E was available, the coefficients for many of the estimates did not incorporate estimated consumer impacts because they were not quantifiable due to a lack of information.

Nonetheless, EPA considered C-E coefficients to be a valuable tool in determining the relative importance of the 56 sites. Even though estimated consumer impacts were not always incorporated (as in the case of potatoes), most of the sites being retained had very high C-E coefficients. A high C-E coefficient indicates that it would be expensive to reduce dietary risk associated with the use of EBDCs on a particular site relative to risk reduction for other sites. A low C-E coefficient indicates that it would be a relatively inexpensive to reduce dietary risks associated with the use of EBDC on a particular site.

For the 11 sites being cancelled (i.e., those for which modifications cannot be made), even if estimated consumer impacts had been fully quantified and the C-E estimate were higher, EPA would have still arrived at the same Final Determination. Generally, the 11 sites being cancelled pose high estimated dietary risks, especially for the infant and children population subgroups.

a. *Protectiveness to infants and children.* Infants and children may be more highly exposed to EBDC and ETU residues than the overall U.S. population due to the high consumption of foods such as apples and bananas relative to body weight. EPA believes that today's Final Determination is protective of infants and children. For thyroid effects, the Agency has estimated the percent of reference dose utilized (i.e., percent RfD) for the infants and children subgroups. For the sites proposed to be retained with modifications, the sum of the individual percent RfD estimates is less than 100 percent for each of the infants and children subgroups. For carcinogenic risk, EPA has estimated the 1-year dietary risk for the infants and the children subgroups. For the sites proposed to be retained with modifications, the sum of the individual 1-year carcinogenic risk estimates is 6.4×10^{-8} for the infants subgroup and 4.6×10^{-8} for the children subgroup (Ref. 33). Assuming that a given individual would be exposed to EBDCs and ETU at the infant and child level of exposure for their entire life, the estimated cumulative risk for the sites being retained would be 4×10^{-6} and 3×10^{-6}, respectively. These risk estimates are in the same order of magnitude as the risk for the overall U.S. population (i.e., 1.6×10^{-6}). The Agency believes that this apparent higher risk to infants and children is not a significant increase. Additionally, the Agency believes that the estimated cumulative dietary risks to infants (4×10^{-6}) would be an overstatement of potential lifetime risk because people are not exposed to EBDC and ETU residues at the infant and child level for a lifetime.

The Agency has commissioned the National Academy of Sciences (NAS) to examine current Agency practices and policies to ascertain that children are adequately protected from pesticide residues in their diet. NAS is gathering data on actual pesticide residues in food and is using a computer model to analyze children's exposure to these compounds in their diet. Also, the Academy is examining current methods used by EPA for setting safety factors and determining acceptable levels of exposure to carcinogens for infants and children. NAS is expected to complete its report in the spring of 1992.

b. *Stability of the dietary risk estimates.* In developing this Final Determination, the Agency was concerned that the estimated lifetime dietary risk not increase over time.

To assure that this estimated cumulative dietary risk will not increase significantly, EPA is requiring that use patterns be amended to specify all variables in the use pattern (i.e., the application rate, maximum number of applications, application interval, and preharvest interval). In the past, the number of applications, application intervals, and preharvest intervals were not specified for all EBDC use sites.

Further, EPA believes that, where appropriate, use patterns no higher than those used during the year that the market basket survey was conducted should be required on product labels; most of the PD 4 dietary residue estimates were based, in part, on market basket data.

For the market basket survey, "typical" use patterns were assumed. "Typical" use patterns were delineated by examining past use patterns and by considering information provided by commenters. Requiring that labels be amended to reflect such use patterns will generally allow the use of the amount of pesticide actually needed by growers to efficaciously control disease. However, the Agency recognizes that certain growers may need higher rates. There are mechanisms to enable the

Agency to consider requests for such needs. Among other things, appropriate residue data would need to be provided before the Agency could make a risk/benefit determination prior to action on the request.

Finally, reinstatement of certain EBDC uses should result in increases in the percent of crop treated; however, the Agency does not believe these increases will exceed the estimates used for the Final Determination. EPA considers the historic usage of the EBDC fungicides to be well-established. Only a significant event such as cancellation of a major alternative would likely increase the market share of EBDCs in the overall fungicide market.

The required use patterns for each of the food uses being retained are detailed in Unit VII.B.

c. *Sites eligible for amended labels as a result of the Special Review.* In September 1989, the EBDC technical registrants amended their labels to delete 42 of the 55 registered food uses of mancozeb, maneb, and metiram. Those sites which were registered on any mancozeb, maneb, or metiram label at the time of the Task Force's 1989 action and which are not being cancelled by today's action, and which meet the requirements of this Notice, are eligible for continued registration under this Notice. The sites which are now eligible for continued registration on amended mancozeb, maneb, and metiram labels as a result of the outcome of this Special Review are listed in the following Table 4. Elsewhere in this Notice are requirements applicable to the 45 uses that may remain pursuant to this Notice, if required modifications are made.

TABLE 4.—SUMMARY OF THE SITES ELIGIBLE FOR RESTORATION ON AMENDED LABELS AS A RESULT OF THE SPECIAL REVIEW.

Food Crop	Eligible for Restoration?		
	Maneb	Mancozeb	Metiram
Almonds	YES	NO	NO
Apples	YES	YES	YES
Asparagus	NO[3]	YES	NO
Banana	YES	YES	NO
Barley	NO	YES	NO
Broccoli	YES	NO	NO
Brussels Sprouts	YES	NO	NO
Cabbage:			
Cabbage	YES	NO	NO
Chinese Cabbage	YES	NO	NO
Cantaloupe	YES	YES	NO
Casaba Melons	YES	YES	NO
Cauliflower	YES	NO	NO
Corn:			
Sweet and Pop	YES	YES	NO
Field	NO	YES	NO

TABLE 4.—SUMMARY OF THE SITES ELIGIBLE FOR RESTORATION ON AMENDED LABELS AS A RESULT OF THE SPECIAL REVIEW.—Continued

Food Crop	Eligible for Restoration?		
	Maneb	Mancozeb	Metiram
Cotton	NO	YES	NO
Crabapple/Quince	NO	YES	NO
Cranberries	YES	YES	NO
Crenshaw Melons	YES	YES	NO
Cucumbers	YES	YES	NO
Dry Beans	YES	NO	NO
Eggplant	YES	NO	NO
Endive	YES	NO	NO
Fennel	NO	YES	NO
Figs:			
Caprifigs[1]	NO	YES	NO
Kadota	YES	NO	NO
Grapes	YES	YES	NO
Honeydew	YES	YES	NO
Kale	YES	NO	NO
Kohlrabi	YES	NO	NO
Lettuce:			
Head	YES	NO	NO
Leaf	YES	NO	NO
Oats	NO	YES	NO
Onion:			
Dry bulb	YES	YES	NO
Green	YES	NO	NO
Papaya	YES	YES	NO
Peanuts	NO[3]	YES	NO
Pears	NO	YES	NO
Pecans	NO	NO	NO
Peppers	YES	NO	NO
Pineapples[2]	NO	YES	NO
Potatoes	YES	YES	YES
Pumpkins	YES	NO[3]	NO
Rye	NO	YES	NO
Sugar Beets	YES	YES	NO
Squash:			
Summer	YES	YES	NO
Winter	YES	NO	NO
Tomatoes	YES	YES	NO
Watermelon	YES	YES	NO
Wheat	NO	YES	NO

[1]Caprifigs is a non-food use.
[2]The use of EBDCs on pineapple is for Seedpiece treatment only.
[3]There are no tolerances for these products. The affected registrants have agreed to delete these uses from product labels.

Just prior to the completion of this Final Determination, the Agency became aware of a few end-use registrants with EBDC products that have some uses for which there are no tolerances. The Agency has contacted these registrants to request that they delete the uses with no tolerances. The affected registrants have agreed to make the appropriate deletions when they submit label amendments to meet the requirements described elsewhere in this document. Should these deletions not occur, the Agency will undertake appropriate regulatory actions.

The Agency through this Notice proposes to cancel products bearing 1 or more of 11 uses for which modifications cannot be made. Further, the Agency proposes to cancel products bearing other specified uses unless required modifications are made. To register other uses not eligible for continued registration under today's Notice, interested registrants must seek new registration and meet registration requirements including certain data requirements. For further information, contact Susan Lewis, Product Manager Number 21, Registration Division (H7505C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *Industrial worker, agricultural worker, and homegardener risks.* Industrial uses of EBDCs include those for water cooling systems and oil drilling. Agricultural uses are those other than industrial or homegarden, which include but are not limited to: farming, commercial greenhouse applications, and commercial turf applications. Homegarden uses of EBDCs include those in and around the home such as garden, lawn, or tree/shrub applications.

a. *Industrial uses.* In the PD 2/3, the Agency proposed cancellation of nabam use in paper mills and sugar mills based on inadequate (i.e., below 100) margins of exposure (MOEs) for thyroid effects due to occupational exposure. Also, EPA proposed a label language requirement that all industrial workers applying EBDC pesticides wear coveralls over long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks, and goggles or a face shield. Additionally, during mixing and loading, a chemical-resistant apron was to be worn.

EPA has reevaluated industrial occupational exposure to nabam (see Unit IV.B.), in light of new exposure data, and now estimates that all MOEs for thyroid effects are greater than 100; carcinogenic risks and developmental effects are not of concern. Thus, no industrial uses will be cancelled, unless required label modifications are not made. The Agency is requiring that labels be amended to require the use of protective clothing. See Unit VII.B. for a detailed description of the required label amendments.

b. *Agricultural uses.* In the PD 2/3, among other things, EPA proposed to cancel maneb use on grapes and commercial ornamentals because the estimated occupational risks from exposure while handling EBDC pesticides exceeded the benefits. Also, the Agency proposed a label language requirement that agricultural workers applying EBDCs wear the protective clothing described in paragraph VII.B. and that a 24-hour interim reentry interval be established.

EPA has reevaluated agricultural occupational exposure and risk to

EBDCs (see Unit IV.B.) and has concluded that the benefits exceed the risks, assuming certain modifications are made to registrations and labels. The Agency is requiring that labels be amended to require the use of protective clothing and to establish an interim reentry interval of 24 hours. See Unit VII.B. for a detailed discussion of the required label amendments.

c. *Homegarden uses.* In the PD 2/3, the Agency proposed to cancel the homegarden use of mancozeb on fruit trees and turf and homegarden use of maneb on vegetables, ornamentals, fruit trees, and turf because the long-term estimated risks exceeded the estimated benefits. Also, EPA proposed label language requirements that homeowners applying EBDC pesticides wear a long-sleeved shirt and long pants and rubber gloves; that gloves must be washed thoroughly with soap and water before removing; that clothes must be changed immediately after using the EBDC product and laundered separately from other laundry items before reuse; and that homeowners must shower immediately after use.

The Agency has reevaluated the risks to homegardeners from applying EBDCs and now estimates that for all uses except mancozeb on fruit trees and turf, the benefits exceed the risks, assuming that the required modifications are made. EPA has determined that the risks associated with the homegarden uses of mancozeb on fruit trees and turf exceed the benefits. Thus, the homegarden use of mancozeb on fruit trees and turf is proposed to be cancelled. No other homegarden uses will be cancelled unless the required modifications are not made. EPA is requiring that product labels bear certain clothing and hygiene language. See Unit VII.B. for a detailed discussion of the required label amendments.

B. Modifications to Terms and Conditions of Registrations

Based on the information summarized in Unit VII.A. of this Notice and discussed elsewhere in this Notice, the Agency has determined that the use of the EBDCs as currently registered poses unreasonable adverse effects to human health or the environment, and that certain modifications to the terms and conditions of registration are required to bring these products into compliance with the statutory standard for registration. Therefore, to avoid cancellation, registrations of subject EBDC products must be modified within the timeframe described in Unit VIII (Procedural Matters) to include the terms and conditions specified below. For each use site, other than those for which modifications are not possible to lower risk, EPA has specified the maximum application rate, the maximum number of applications per season, the application interval, and the minimum preharvest interval which will be allowed on product labels. For all sites except barley, oats, rye, and wheat, EPA may allow registrants to substitute a maximum seasonal use (i.e., lb. a.i./acre per season) for the maximum number of applications per season. The maximum seasonal use can be no greater than the maximum application rate multiplied by the maximum number of applications, which are specified below. Such a request for maximum seasonal use must be approved by the Agency and must be consistent with available residue data.

To avoid cancellation, all mancozeb, maneb, and metiram labels and product registrations bearing agricultural uses must be amended to include the following label statement: "If this product is used on a crop, no other product containing a different EBDC active ingredient may be used on the same crop during the same growing season."

1. *Almonds.* Maneb is registered for use on almonds. The Agency intends to cancel all maneb products registered for use on almonds unless the registrations and labelling are amended as follows: Maximum application rate– 6.4 lb. a.i./A; maximum number of applications per season–4; application interval–7 to 10 days; and minimum preharvest interval–5 weeks after petal fall.

2. *Apples.* Mancozeb, maneb, and metiram are registered for use on apples. The Agency intends to cancel all mancozeb, maneb, and metiram products registered for use on apples unless the registrations and labelling are amended as follows: All mancozeb, maneb, and metiram products registered for use on apples must state that the product may be used with either the pre-bloom use pattern or the extended application use pattern. Further, labels must state that the two treatment schedules (i.e., pre-bloom and extended) must not be combined or integrated. The pre-bloom use pattern must be at least as restrictive as the following: Maximum application rate–4.8 lb ai/A; maximum number of applications per season–4; application interval–7 to 10 days; and minimum preharvest interval–bloom. The extended application use pattern must be at least as restrictive as the following: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–7; application interval–7 to 10 days; and minimum preharvest interval–77 days. These use patterns are consistent with the International Apple Institute data which were submitted in lieu of the required market basket survey data. Additionally, to avoid cancellation, all mancozeb, maneb, and metiram labels must include the following label statement: "It is recommended that this product be used in an Integrated Pest Management Program."

3. *Asparagus.* Mancozeb is registered for use on asparagus ferns after harvest of spears. The Agency intends to cancel all mancozeb products registered for use on asparagus unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–4; application interval–10 days; and minimum preharvest interval–180 days for all states except California and Arizona; minimum preharvest interval in California and Arizona–120 days. This use pattern is consistent with residue data submitted in support of asparagus.

4. *Bananas.* Mancozeb and maneb are registered for use on bananas. The Agency intends to cancel all mancozeb and maneb products registered for use on bananas unless the registrations and labelling are amended as follows: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–10; application interval–14 to 21 days; and minimum preharvest interval–0 days. This use pattern is consistent with the typical use during the market basket survey period.

5. *Barley.* Mancozeb is registered for use on barley. The Agency intends to cancel all mancozeb products registered for use on barley unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–3; application interval–7 to 10 days; and minimum preharvest interval–26 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of sweet corn, which are translatable to barley.

6. *Broccoli.* Maneb is registered for use on broccoli. The Agency intends to cancel all maneb products registered for use on broccoli unless the registrations and labelling are amended as follows: Maximum application rate– 1.6 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–7 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of broccoli.

7. *Brussels sprouts.* Maneb is registered for use on brussels sprouts. The Agency intends to cancel all maneb

products registered for use on brussels sprouts unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–7 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of broccoli, which are translatable to brussels sprouts.

8. *Cabbage.* Maneb is registered for use on cabbage. The Agency intends to cancel all maneb products registered for use on cabbage (including chinese cabbage, tight-headed varieties only) unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–7 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of broccoli, which are translatable to cabbage.

The Agency intends to cancel all maneb products registered for use on all other varieties of cabbage (which would include loose-headed varieties of chinese cabbage) in California and Hawaii unless the registrations and labelling are amended as follows: Maximum application rate–1.2 lb. a.i./A; maximum number of applications per season–6; application interval–7 days; and minimum preharvest interval–7 days in California and 10 days in Hawaii. This use pattern is consistent with the two existing uses, which are in California and Hawaii.

9. *Cauliflower.* Maneb is registered for use on cauliflower. The Agency intends to cancel all maneb products registered for use on cauliflower unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–7 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of broccoli, which are translatable to cauliflower.

10. *Corn, field.* Mancozeb is registered for use on field corn. The Agency intends to cancel all mancozeb products registered for use on field corn unless the registrations and labelling are amended as follows: Maximum application rate–1.2 lb. a.i./A; maximum number of applications per season–10; and minimum preharvest interval–40 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of corn.

11. *Corn, sweet and pop.* Mancozeb and maneb are registered for use on sweet corn and popcorn. The Agency intends to cancel all maneb products registered for use on sweet corn and popcorn east of the Mississippi River and Arkansas and Louisiana unless the registrations and labelling are amended as follows: Maximum application rate–1.2 lb. a.i./A; maximum number of applications per season–15; application interval–3 to 10 days; and minimum preharvest interval–7 days. The Agency intends to cancel all maneb products registered for use on sweet corn and popcorn west of the Mississippi River (except Arkansas and Louisiana) unless the registrations and labelling are amended as follows: Maximum application rate–1.2 lb. a.i./A; maximum number of applications per season–5; application interval–3 to 10 days; and minimum preharvest interval–7 days. The Agency intends to cancel all mancozeb products registered for use on sweet and popcorn east of the Mississippi River and Arkansas and Louisiana unless the registrations and labelling are amended as follows: Maximum application rate–1.2 lb. a.i./A; maximum number of applications per season–15; application interval–4 to 7 days; and minimum preharvest interval–7 days. The Agency intends to cancel all mancozeb products registered for use on sweet and popcorn west of the Mississippi River (except Arkansas and Louisiana) unless the registrations and labelling are amended as follows: Maximum application rate–1.2 lb. a.i./A; maximum number of applications per season–5; application interval–4 to 7 days; and minimum preharvest interval–7 days. These use patterns are consistent with the typical use during the market basket survey period and/or residue data submitted in support of corn.

12. *Cotton.* Mancozeb is registered for use on cotton in the Southwestern United States. The Agency intends to cancel all mancozeb products registered for use on cotton unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–4; and minimum preharvest interval–mancozeb may not be applied after the bolls open. The label must specify a numerical minimum preharvest interval consistent with boll opening and the supporting residue data. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of dry beans, which are translatable to cotton.

13. *Crabapples/quince.* Mancozeb is registered for use on crabapples and quince. The Agency intends to cancel all mancozeb products registered for use on crabapples and/or quince unless the registrations and labelling are amended as follows: All mancozeb products registered for use on crabapples/quince must state that the product may be used with either the pre-bloom use pattern or the extended application use pattern. Further, the label must state that the 2 treatment schedules (i.e., pre-bloom and extended) must not be combined or integrated. The pre-bloom use pattern must be at least as restrictive as the following: Maximum application rate–4.8 lb. a.i./A; maximum number of applications per season–4; application interval–7 to 10 days; and minimum preharvest interval-bloom. The extended application use pattern must be at least as restrictive as the following: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–7; application interval–7 to 10 days; and minimum preharvest interval–77 days. These use patterns are consistent with the International Apple Institute data which were submitted in lieu of the required market basket survey data and are translatable to crabapples/quince. Additionally, to avoid cancellation, all mancozeb products registered for use on crabapples/quince must include the following label statement: "It is recommended that this product be used in an Integrated Pest Management Program."

14. *Cranberries.* Mancozeb and maneb are registered for use on cranberries. The Agency intends to cancel all mancozeb and maneb products registered for use on cranberries unless the registrations and labelling are amended as follows: Maximum application rate-4.8 lb. a.i./A; maximum number of applications per season–3; application interval–7 to 10 days; and minimum preharvest interval–30 days. This use pattern is consistent with residue data submitted in support of cranberries.

15. *Cucumbers.* Mancozeb and maneb are registered for use on cucumbers. The Agency intends to cancel all maneb products registered for use on cucumbers unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 10 days; and minimum preharvest interval–5 days. The Agency intends to cancel all mancozeb products registered for use on cucumbers unless the registrations and labelling are amended as follows:

Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 10 days; and minimum preharvest interval–5 days. These use patterns are consistent with the typical use during the market basket survey period and residue data submitted in support of cucumbers.

16. *Dry beans.* Maneb is registered for use on dry beans. The Agency intends to cancel all maneb products registered for use on dry beans unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–6; application interval–5 to 7 days; and minimum preharvest interval–30 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of dry beans.

17. *Eggplant.* Maneb is registered for use on eggplant. The Agency intends to cancel all maneb products registered for use on eggplant unless the registrations and labelling are amended as follows: Maximum application rate –1.6 lb. a.i./A; maximum number of applications per season–7; application interval–7 to 10 days; and minimum preharvest interval–5 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of tomatoes, which are translatable to eggplant.

18. *Endive.* Maneb is registered for use on endive. The Agency intends to cancel all maneb products registered for use on endive unless the registrations and labelling are amended as follows: Maximum application rate –1.6 lb. a.i./A; maximum number of applications per season–6, except in California which must be no more than 4; application interval–7 to 10 days; and minimum preharvest interval–10 days, except in California which must be at least 14 days. This use pattern is consistent with the typical use during the market basket survey period, residue data submitted in support of lettuce (which is translatable to endive), and information provided by commenters.

19. *Fennel.* Mancozeb is registered for use on fennel. The Agency intends to cancel all mancozeb products registered for use on fennel unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 10 days; and minimum preharvest interval–14 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of celery, which are translatable to fennel.

20. *Grapes.* Mancozeb and maneb are registered for use on grapes. The Agency intends to cancel all mancozeb products registered for grapes east of the Rocky Mountains unless the registrations and labelling are amended as follows: Maximum application rate–3.2 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–66 days. The Agency intends to cancel all mancozeb products registered for grapes west of the Rocky Mountains unless the registrations and labelling are amended as follows: Maximum application rate –2.0 lb. a.i./A; maximum number of applications per season–3; application interval–7 to 10 days; and minimum preharvest interval–66 days, except in California where no treatment may occur after bloom. The Agency intends to cancel all maneb products registered for use on grapes east of the Rocky Mountains unless the registrations and labelling are amended as follows: Maximum application rate–3.2 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–66 days. The Agency intends to cancel all maneb products registered for use on grapes west of the Rocky Mountains unless the registrations and labelling are amended as follows: Maximum application rate–2.0 lb. a.i./A; maximum number of applications per season–3; application interval–7 to 10 days; and minimum preharvest interval–66 days, except in California where no treatment may occur after bloom. These use patterns are consistent with residue data submitted in support of grapes, or typical use during the market basket survey.

21. *Kadota figs.* Maneb is registered for use on kadota figs. The Agency intends to cancel all maneb products registered for use on kadota figs unless the registrations and labelling are amended as follows: Maximum application rate–0.6 lb. a.i./100 gallons not to exceed 2.4 lb a.i./A; maximum number of applications per season–1; and minimum preharvest interval–10 days. This use pattern is consistent with available field trial residue data.

22. *Kale.* Maneb is registered for use on kale. The Agency intends to cancel all maneb products registered for use on kale unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–2 per cutting; application interval–7 to 10 days; and minimum preharvest interval–10 days. This use pattern is consistent with the typical use during the market basket survey period and is based on data submitted by commenters to the EBDC PD 2/3.

23. *Kohlrabi.* Maneb is registered for use on kohlrabi. The Agency intends to cancel all maneb products registered for use on kohlrabi unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–7 days. This use pattern is consistent with the typical use and residue data submitted in support of broccoli, which are translatable to kohlrabi.

24. *Lettuce, head.* Maneb is registered for use on head lettuce. The Agency intends to cancel all maneb products registered for use on head lettuce unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–6, except in California which must be no more than 4; application interval–7 to 10 days; and minimum preharvest interval–10 days, except in California which must be at least 14 days. This use pattern is consistent with the typical use during the market basket survey period, residue data submitted in support of lettuce, and information provided by commenters.

25. *Lettuce, leaf.* Maneb is registered for use on leaf lettuce. The Agency intends to cancel all maneb products registered for use on leaf lettuce unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–6, except in California which must be no more than 4; application interval–7 to 10 days; and minimum preharvest interval–10 days, except in California which must be at least 14 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of lettuce.

26. *Melons (cantaloupe, casaba, crenshaw, honeydew, and watermelon).* Mancozeb and maneb are registered for use on melons. The Agency intends to cancel all mancozeb products registered for use on melons unless the registrations and labelling are amended as follows: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 10 days; and minimum preharvest interval–5 days. These use patterns are consistent with the typical use during the market basket survey period and residue data submitted in support of cucumbers, which are translatable to melons. The Agency intends to cancel all maneb products

registered for use on melons unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 10 days; and minimum preharvest interval–5 days.

27. *Oats.* Mancozeb is registered for use on oats. The Agency intends to cancel all mancozeb products registered for use on oats unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–3; application interval–7 to 10 days; and minimum preharvest interval–26 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of sweet corn, which are translatable to oats.

28. *Onions (dry bulb and green).* Maneb is registered for use on dry bulb and green onions. Mancozeb is registered for use on dry bulb onions. The Agency intends to cancel all mancozeb and maneb products registered for use on dry onions unless the registrations and labelling are amended as follows: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–10; application interval–7 days; and minimum preharvest interval–7 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of onions. Also, the Agency intends to cancel all mancozeb and maneb products registered for use on onions unless the registrations and labelling are amended to include the following statement: "Do not apply to exposed bulbs." The Agency intends to cancel all maneb products registered for use on green onions unless the registrations and labelling are amended as follows: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–7; application interval–7 days; and minimum preharvest interval–7 days.

29. *Papayas.* Mancozeb and maneb are registered for use on papayas. The Agency intends to cancel all mancozeb and maneb products registered for use on papayas unless the registrations and labelling are amended as follows: Maximum application rate–2.0 lb. a.i./A; maximum number of applications per season–14; application interval–14 to 21 days; and minimum preharvest interval–0 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of papayas.

30. *Peanuts.* Mancozeb is registered for use on peanuts. The Agency intends to cancel all mancozeb products registered for use on peanuts unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 14 days; and minimum preharvest interval–14 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of dry beans, which are translatable to peanuts.

31. *Pears.* Mancozeb is registered for use on pears. The Agency intends to cancel all mancozeb products registered for use on pears unless the registrations and labelling are amended as follows: All mancozeb products registered for use on pears must state that the product may be used with either the pre-bloom use pattern or the extended application use pattern. Further, the label must state that the two treatment schedules (i.e., pre-bloom and extended) must not be combined or integrated. The pre-bloom use pattern must be at least as restrictive as the following: Maximum application rate–4.8 lb. a.i./A; maximum number of applications per season–4; application interval–7 to 10 days; and minimum preharvest interval-bloom. The extended application use pattern must be at least as restrictive as the following: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–7; application interval–7 to 10 days; and minimum preharvest interval–77 days. These use patterns are consistent with the International Apple Institute data on apples which were submitted in lieu of the required market basket survey data, and are translatable to pears. Additionally, to avoid cancellation, all mancozeb products registered for pears must include the following label statement: "It is recommended that this product be used in an Integrated Pest Management Program."

32. *Pecans.* No EBDC products are currently registered for use on pecans. EPA will allow metiram to be registered for use on pecans provided all applicable data requirements and other requirements of registration are met. As an additional condition of registration, any metiram product registered for use on pecans must be at least as restrictive as the following use pattern: Maximum application rate–6.4 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–5 weeks after petal fall.

33. *Peppers.* Maneb is registered for use on peppers. The Agency intends to cancel all maneb products registered for use on peppers grown west of the Mississippi River unless the registrations and labelling are amended such that the label must specify the following as applicable West of the Mississippi River: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–7 days. The Agency intends to cancel all maneb products registered for use on peppers grown east of the Mississippi River unless the registrations and labelling are amended such that the label must specify the following as applicable east of the Mississippi River: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–6; application interval–7 to 10 days; and minimum preharvest interval–7 days. These use patterns are consistent with the typical use during the market basket survey period and residue data submitted in support of tomatoes, which are translatable to peppers.

34. *Potatoes.* Mancozeb, maneb, and metiram are registered for use on potatoes. The Agency intends to cancel all mancozeb, maneb, or metiram products registered for use on potatoes unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–7; application interval–5 to 10 days; and minimum preharvest interval–3 days in Connecticut, Florida, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Vermont, and Wisconsin and at least 14 days elsewhere. Also, in order to avoid cancellation, all mancozeb, maneb, and metiram labels must include the following label statement: "It is recommended that this product be used within an Integrated Pest Management Program. Also, vine-kill should occur 14 days before harvest." This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of potatoes. The label statement is consistent with public comments received on the EBDC PD 2/3.

35. *Pumpkins.* Maneb is registered for use on pumpkins. The Agency intends to cancel all maneb products registered for use on pumpkins unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 10 days; and minimum preharvest interval–5 days. These use patterns are consistent with the typical use during the market basket survey period and residue data submitted in support of cucumbers, which are translatable to pumpkins.

36. *Rye.* Mancozeb is registered for use on rye. The Agency intends to cancel all mancozeb products registered for use on rye unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–3; application interval–7 to 10 days; and minimum preharvest interval–26 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of sweet corn, which are translatable to rye.

37. *Squash.* Maneb is registered for both summer and winter squash while mancozeb only is registered for summer squash. The Agency intends to cancel all maneb products registered for use on summer or winter squash unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 10 days; and minimum preharvest interval–5 days. The Agency intends to cancel all mancozeb products registered for use on summer squash unless the registrations and labelling are amended as follows: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–8; application interval–7 to 10 days; and minimum preharvest interval–5 days. These use patterns are consistent with the typical use during the market basket survey period and residue data submitted in support of cucumbers, which are translatable to squash.

38. *Sugar beets.* Mancozeb and maneb are registered for use on sugar beets. The Agency intends to cancel all mancozeb and maneb products registered for use on sugar beets unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–7; application interval–7 to 10 days; and minimum preharvest interval–14 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of sugar beets.

39. *Tomatoes.* Mancozeb and maneb are registered for use on tomatoes. The Agency intends to cancel all mancozeb and maneb products registered for use on tomatoes grown west of the Mississippi River unless the registrations and labelling are amended such that the label must specify the following as applicable west of the Mississippi River: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–4; application interval–7 to 10 days; and minimum preharvest interval–5 days. The Agency intends to cancel all mancozeb and maneb products registered for use on tomatoes grown east of the Mississippi River unless the registrations and labelling are amended such that the label must specify the following as applicable east of the Mississippi River: Maximum application rate–2.4 lb. a.i./A; maximum number of applications per season–7; application interval–7 to 10 days; and minimum preharvest interval–5 days. These use patterns are consistent with the typical use during the market basket survey period and residue data submitted in support of tomatoes.

40. *Wheat.* Mancozeb is registered for use on wheat. The Agency intends to cancel all mancozeb products registered for use on wheat unless the registrations and labelling are amended as follows: Maximum application rate–1.6 lb. a.i./A; maximum number of applications per season–3; application interval–7 to 10 days; and minimum preharvest interval–26 days. This use pattern is consistent with the typical use during the market basket survey period and residue data submitted in support of sweet corn, which are translatable to wheat.

41. *Apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans, and turnips.* In order to avoid cancellation, any product registration and label bearing uses for apricots, celery, carrots, collards, mustard greens, nectarines, peaches, rhubarb, spinach, succulent beans, or turnips must be amended within the time specified in Unit VIII to delete each of these uses.

42. *Homegarden uses of mancozeb on fruit trees and turf.* In order to avoid cancellation, all mancozeb product registrations and labels bearing homegarden uses for fruit trees or turf must be amended to delete each of these two uses.

43. *Worker requirements for agricultural uses.* In order to avoid cancellation, all mancozeb, maneb, and metiram product registrations and labels bearing uses for agricultural uses must be amended to include the following protective clothing language: "All agricultural workers/handlers (i.e., mixers, loaders, and applicators) applying EBDCs must wear coveralls over long-sleeved shirt and long pants, shoes, socks, and chemical-resistant gloves. During mixing and loading, a chemical-resistant apron and goggles or a face shield must also be worn. For agricultural workers, where completely enclosed cabs with positive pressure filtration or an enclosed cockpit for aerial application are used, a long-sleeved shirt and long pants may be worn in place of the protective clothing described above. Chemical-resistant gloves must be available in the cab or cockpit and worn upon exiting. The gloves must be kept in an enclosed container in the cab or cockpit to prevent contamination of the inside of the cab or cockpit. During aerial application, human flaggers are prohibited unless in totally enclosed vehicles." Additionally, all mancozeb, maneb, and metiram product registrations and labels bearing agricultural uses must be amended to establish an interim reentry interval of 24 hours. This interim reentry interval will remain in effect until the Agency completes its evaluation of the reentry data. When the review is complete, the Agency will reestablish reentry intervals, if appropriate. No nabam labels bear any agricultural uses.

44. *Worker requirements for industrial uses.* In order to avoid cancellation, all nabam product registrations and labels bearing any industrial uses must be amended to include the following protective clothing language: "All industrial workers (i.e., mixers, loaders, and applicators) applying EBDCs must wear coveralls over a long-sleeved shirt and long pants, shoes, socks, and chemical-resistant gloves. During mixing and loading, a chemical-resistant apron and goggles or a face shield must also be worn." No mancozeb, maneb, or metiram labels can bear any industrial uses.

45. *Homegardener use requirements.* In order to avoid cancellation, all mancozeb (except those for fruit trees and turf), maneb, and metiram product registrations and labels bearing homegarden uses must be amended to bear the following clothing and hygiene language: "Homegardeners applying this product must wear a long-sleeved shirt, long pants, and chemical-resistant gloves. The gloves must be washed thoroughly with soap and water before removing. Clothes must be changed immediately after using this EBDC product and must be laundered separately from other laundry items before reuse."

C. Tolerance Reductions/Revocations

In May 1990, EPA proposed to reduce and revoke the tolerances for the 42 uses deleted by the technical registrants in September 1990 and for the 3 additional uses that the Agency proposed to cancel (55 FR 20416).

In view of the actions required by this Notice, EPA will continue its efforts to revoke mancozeb, maneb, and/or metiram tolerances for apricots, carrots, celery, collards, mustard greens,

nectarines, peaches, rhubarb, spinach, succulent beans, and turnips. The Agency expects to issue a Final Rule revoking the tolerances for these 11 commodities within 3 months of today's Notice and will allow for legally-treated commodities to clear the channels-of-trade.

For a number of sites, additional residue data may be needed to assess tolerances. EPA expects to issue within the next 6 months a Data Call-In (DCI) Notice under FIFRA section 3(c)(2)(B) to require any data that are determined to be needed for tolerance assessment purposes. Sites where it appears now that additional data may be required for use in assessing tolerances include: apples, kale, and pears. Where adequate data are available, the Agency will seek to adjust tolerances, where necessary, for the remaining 45 sites.

D. Existing Stocks and Disposal Provisions

1. *Non-conforming stocks.* Under the authority of FIFRA section 6, EPA may establish certain limitations on the sale, distribution, and use of existing stocks of EBDC pesticide products subject to any final cancellation Notice. EPA defines the term "existing stocks" to mean any quantity of EBDC pesticide product in the United States, on the date of cancellation which is being held for shipment or release or has been shipped or released into commerce.

EPA has determined that continued sale and distribution by the registrants of existing stocks of EBDC pesticides that do not comply with the provisions of this Notice may continue for 6 months following the date of cancellation. Existing stocks which are not sold or distributed by the registrants within that time period or are not properly relabelled in accordance with this Notice must be disposed of in accordance with applicable Federal, State, and local requirements. Sale and use by persons other than the registrants may continue for 3 years after the date of cancellation.

2. *Requirements for relabelling of existing stocks.* For the 1992 use season, the Agency will permit relabelling to occur by persons other than the registrants provided that those persons are acting under the supervision of the registrant. Supervision by the registrant does not have to be direct on-site supervision at the site where the relabelling is occurring. However, in cases where relabelling is performed, it must be performed by someone acting under the supervision of the registrant. The registrant will remain responsible and liable for the proper relabelling of the product. Additionally, for the purposes of this relabelling program, any such person acting on behalf of the registrant will be considered for the purposes of FIFRA to be an agent of the registrant of the product being relabelled. The relabelling may also be conducted at facilities that are not EPA registered establishments under FIFRA section 7, provided that the registrants comply with the reporting requirements in the following paragraph. After December 31, 1992, relabelling may only occur by the registrant or persons under contract to the registrant for the production of that pesticide and such relabelling must comply with FIFRA section 7.

Registrants must submit to EPA a report by June 30, 1992 concerning any relabelling of its product undertaken by any person under the terms of the above paragraph. A report must also be submitted to EPA by December 31, 1992 if any additional relabelling of EBDC product occurred since the June 30 report. These reports must identify the person or company that performed the relabelling; the registration number(s) of the product that was relabelled; the address of the facility where the relabelling took place; the date(s) on which the relabelling took place; and, for each registration number, the quantity of product relabelled. These reports must be filed with the Director of the Compliance Division; Office of Compliance Monitoring (EN-342); Environmental Protection Agency, 401 M Street, SW.; Washington, DC 20460. Failure to comply with the above relabelling or reporting requirements will be considered, among other things, a violation of FIFRA sections 12(a)(2)(K) and 12(a)(2)(N).

VIII. Procedural Matters

This Notice announces EPA's intent to cancel all registrations for products containing EBDCs which do not comply with the modified terms and conditions of registration set forth in this Notice. This action is being taken pursuant to authority granted by section 6(b) of FIFRA. Under FIFRA sections 6(b)(1) and 3(c)(6), applicants, registrants, and certain other adversely affected parties may request a hearing on the cancellation or denial actions that this Notice initiates. Any hearing concerning cancellation or denial of registration for any pesticide product containing the EBDCs will be held in accordance with FIFRA section 6(d). Alternatively, registrants/applicants may apply to amend the product registrations/applications to remove the uses proposed to be cancelled and make the other changes required by this Notice within 30 days of publication of this Notice or receipt of this Notice, whichever occurs later. Unless a hearing or amended registration is properly requested with regard to a particular registration or application, the registration will be cancelled or the application denied. This Unit of the Notice explains how such persons may request a hearing or amend their registrations in accordance with the procedures specified in this Notice, and the consequences of requesting or failing to request a hearing or submit an amended registration or application.

A. Procedures for Requesting a Hearing

To contest the regulatory action initiated by this Notice, registrants, or any applicant for registration whose application for registration is affected by this Notice (including intrastate applicants who have previously marketed such products pursuant to 40 CFR 162.17), must request a hearing within 30 days of receipt of this Notice, or within 30 days from the date of publication of this Notice in the **Federal Register**, whichever occurs later. Any other persons adversely affected by the cancellation action described in this Notice, or any interested persons with the concurrence of an applicant whose application for registration has been denied, must request a hearing within 30 days of publication of this Notice in the **Federal Register.**

All registrants, applicants, and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require that all requests must identify the specific registration(s) by Registration Number(s) and the specific use(s) for which a hearing is requested and must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of the pesticide product for which a hearing is requested.Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR part 164). All hearings will be held in Washington, DC. In the event of a timely

and effective request for a hearing, each cancellation action concerning the specific use or uses of the specific registered product which is the subject of the hearing request will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

The hearing will be limited to the specific registrations or applications for which the hearing is requested.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation or denial of registration of a specific EBDC product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30-day period, registration of that product will be cancelled or the denial will be effective.

B. Amendment of Registration or Application

Registrants of EBDC products who are affected by this Notice of Intent to Cancel (NOIC) may avoid cancellation of their registrations without requesting a hearing by filing an application for an amended registration to amend product labelling to comply with the labelling requirements described in Unit VII of this NOIC. Applications containing the label modifications required by this Notice must include 3 copies of the revised label. The approved label must be affixed to all end-use products released for shipment 6 months after publication of this Notice. All applications for amendment must be filed within 30 days of the date of **Federal Register** publication of this Notice or within 30 days of receipt of this Notice, whichever occurs later. Similarly applicants for a registration that is subject to this NOIC must file an amended application for registration within the applicable 30-day period to avoid denial of the application. The failure to file an amendment on time or the timely filing of an inadequate amendment will result in automatic cancellation pursuant to FIFRA section 6(b) or denial under section 3(c)(6).

Registrants whose registrations become cancelled but who wish to use the existing stocks provisions provided above must submit revised labelling, including proposed time limitations on use, for EPA acceptance prior to the sale and distribution of such existing stocks. All applications must be addressed to: Susan Lewis, Product Manager Number 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

C. Separation of Functions

EPA's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of EPA to perform the judicial function of EPA in any administrative hearing on this Notice of Intent to Cancel: the Office of Administrative Law Judge, the Office of the Judicial Officer, the Deputy Administrator and the members of the staff in the immediate office of the Deputy Administrator, and the Administrator and the members of the staff in the immediate office of the Administrator. None of the persons designated as the judicial staff may have any ex parte communications on the merits of any of the issues involved in this proceeding with the trial staff or any other interested person not employed by EPA without fully complying with the applicable regulations.

D. Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket (OPP–30000/18D) for the EBDC Special Review. This public docket includes:

(1) this Notice; (2) any other notices pertinent to the EBDC Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice or any other Notice, and any other documents regarding the EBDC pesticides submitted at any time during the Special Review process by any person outside the government; (4) a transcript of any public meeting held by the Agency for the purpose of gathering information on the EBDCs; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government pertaining to the EBDCs; and (6) a current index of materials in the public docket.

IX. References

(1) Clifford, M.A. (1991). Memorandum to Kathleen Martin (USEPA). Apple Residue Field Trial Study. February 21, 1991.

(2) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Response to Special Review Data Call-In Notice of November 7, 1990. EBDC and ETU Residues in Apples from Field Trials Using Proposed New Use Pattern. May 23, 1991.

(3) Hummel, S.V. (1992). Memorandum to Kathleen Martin (USEPA). EBDCs -Response to Special Review Data Call-In Notice of November 7, 1990. EBDC and ETU Residues in Apples from Field Trials Using Second Proposed New Use Pattern. January 8, 1992.

(4) Hummel, S.V. (1991) Memorandum to Kathleen Martin (USEPA). Mancozeb Residues in Papayas; Commercial Handling Study Hawaii Papaya Industry Association. May 23, 1991.

(5) Hummel, S.V. (1990) Memorandum to Kathleen Martin (USEPA). EBDC/ETU Use Survey and Monitoring, 1989 Midwest Food Processors Association, Inc. November 26, 1990.

(6) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Response to PD 2/3 Comments. June 12, 1991.

(7) U.S. Environmental Protection Agency (USEPA). (1989) Data Call-In for the EBDCs. March 10, 1989.

(8) U.S. Environmental Protection Agency (USEPA). (1989) EBDC Technical Support Document.

(9)Kocialski, A. (1991). Memorandum to Kathleen Martin (USEPA). Third Peer Review of Ethylene Thiourea. Selecting the Q_1^* for Ethylenethiourea (ETU). September 26, 1991.

(10) Kocialski, A. (1991). Memorandum to Kathleen Martin (USEPA). Ethylenethiourea Cancer Potency Factor (Q_1^*) Calculations Based on Female Mouse Liver Tumors Using Both Pooled Data and the Diagonal Data Set from the National Toxicology Program Study (NTP–TR–No.388).

(11) Noles, J. (1991). Memorandum to Kathleen Martin (USEPA). Addendum to the June 1, 1990 Summary of Data Submitted After Publication of the Registration Standards for Mancozeb, Maneb, Metiram and Nabam.

(12) Kocialski, A. (1991). Memorandum to Kathleen Martin (USEPA). EBDC/Responses to Toxicology Comments on Position Document 2/3.

(13) ETU Task Force. (1990). EBDC/ETU National Food Survey Fourth Quarter and Final Report. October 1, 1990. USEPA MRID No. 416436–01.

(14) Clifford, M.A. (1991). Memorandum to Kathleen Martin (USEPA). The Statistical Issues of the EBDC/ETU Market Basket Survey. January 14, 1991.

(15) Clifford, M.A. (1991). Memorandum to Kathleen Martin (USEPA). Review of EBDC/ETU Market Basket Data, Statistical Issues. April 22, 1991.

(16) Clifford, M.A. (1991). Memorandum to Kathleen Martin (USEPA). The Results from the EBDC/ETU Market Basket Survey and Final Review of the Statistical Issues Concerning the Survey. April 22, 1991.

(17) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Dietary Exposure Estimates for EBDCs and ETU Based on the EBDC/ETU Market Basket Survey. February 28, 1991.

(18) Hummel, S.V. (1990). Memorandum to Kathleen Martin (USEPA). EBDC/ETU Monitoring Study Fourth Quarter and Final Report. December 4, 1990.

(19) Hummel, S.V. (1989). Memorandum to Kathleen Martin (USEPA). EBDC Monitoring Study Translation of Data. December 11, 1989.

(20) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Response to Special Review Data Call-In Notice of November 7, 1990. EBDC and Residues in Bananas Collected at Ports of Entry into the US. May 20, 1991.

(21) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Response to Special Review Data Call-In Notice of November 7, 1990. EBDC and ETU Residues in Grape Juice Collected in Areas Likely to Have Been Treated with EBDCs. May 20, 1990.

(22) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Response to Special Review Data Call-In Notice of November 7, 1990. EBDC and ETU Residues in Grape Wine Collected in Areas Likely to Have Been Treated with EBDCs.

(23) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Response to Special Review Data Call-In Notice of November 7, 1990. EBDC and ETU Residues in EBDC Field Trials on Grapes. May 20, 1991.

(24) U.S. Department of Agriculture (1991). National Agricultural Pesticide Impact Assessment Program (NAPIAP) Fungicide Benefits Assessment.

(25) Hummel, S.V. (1990). Memorandum to Kathleen Martin (USEPA). Mancozeb and ETU on Tomatoes -Washing Study. October 25, 1990.

(26) Hummel, S.V. (1991) Memorandum to Kathleen Martin (USEPA). EBDCs -FDA and State Monitoring Data. October 24, 1991.

(27) Hummel, S.V. (1991) Memorandum to Kathleen Martin (USEPA). EBDC Degradation Studies on Selected Florida Vegetables. May 24, 1991.

(28) Hummel, S.V. (1990) Memorandum to Kathleen Martin (USEPA). Maneb Response to the EBDC PD 2/3. Risk Benefit Information for the Use of Maneb on Head Lettuce. October 17, 1990.

(29) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Dietary Exposure Estimates for EBDCs and ETU based on the EBDC/ETU Market Basket Survey. August 7, 1991.

(30) Hummel, S.V. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Dietary Exposure Estimates for EBDCs and ETU based on the EBDC/ETU Market Basket Survey. February 28, 1991.

(31) Hummel, S.V. (1991) Memorandum to Kathleen Martin (USEPA). EBDC/ETU Use Survey and Monitoring, 1989 Michigan Farm Bureau, Michigan Deptartment of Agriculture. June 3, 1991.

(32) Jennings, A.L. (1991) Revised Site Analyses for the Benefits of EBDCs for the PD 4. Biological and Economic Analysis Division, OPP, USEPA. November 1991.

(33) Griffin, R. (1991). Memorandum to Kathleen Martin (USEPA). EBDC/ETU Special Review. DRES Dietary Exposure/Risk Estimates. October 11, 1991.

(34) Griffin, R. (1991). Memorandum to Kathleen Martin (USEPA). EBDC/ETU. Preliminary Carcinogenic Risk Estimates Based (In Part) on Market Basket Survey Data. March 1, 1991.

(35) Griffin, R. (1992). Memorandum to Kathleen Martin (USEPA). EBDC/ETU Special Review. DRES Dietary Exposure/Risk Estimate Revisions for Apples and Pears. January 10, 1992.

(36) Griffin, R. (1991). Memorandum to Kathleen Martin (USEPA). Response to EBDC/ETU Public Comment. June 20, 1991.

(37) Knott, S.M. (1991). Memorandum to Kathleen Martin (USEPA). Updated Occupational and Residential Exposure Assessment for the EBDC Final Determination. December 10, 1991.

(38) Zendzian, R. (1991). Memorandum to Kathleen Martin (USEPA). EBDCs -Dermal Absorption of ETU. February 16, 1991.

(39) Knott, S.M. (1991). Memorandum to Kathleen Martin (USEPA). Update on the EBDC Occupational and Residential Exposure Assessment, Comments, and Tank-Mix Stability Study Settlement Agreement. August 21, 1991.

(40) Knott, S.M. (1991). Memorandum to Kathleen Martin (USEPA). Review of Rebuttal Comments on the Preliminary Determination to Cancel Certain EBDC Registrations. May 16, 1991.

(41) The American Pyhtopathological Society. Fungicide and Nematicide Tests. St. Paul, Minnesota.

All but the published references concerning this Final Determination on the EBDCs are available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Dated: February 13, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92-4772 Filed 2-28-92; 8:45 am]

Billing Code 6560-50-F

Reader Aids

Federal Register

Vol. 57, No. 41

Monday, March 2, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 28, 1992

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2233.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
4	(869-013-00003-0)	15.00	Jan. 1, 1991
5 Parts:			
1-699	(869-013-00004-8)	17.00	Jan. 1, 1991
700-1199	(869-013-00005-6)	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved)	(869-013-00006-4)	18.00	Jan. 1, 1991
7 Parts:			
0-26	(869-013-00007-2)	15.00	Jan. 1, 1991
27-45	(869-013-00008-1)	12.00	Jan. 1, 1991
46-51	(869-013-00009-9)	17.00	Jan. 1, 1991
52	(869-013-00010-2)	24.00	Jan. 1, 1991
53-209	(869-013-00011-1)	18.00	Jan. 1, 1991
210-299	(869-013-00012-9)	24.00	Jan. 1, 1991
300-399	(869-013-00013-7)	12.00	Jan. 1, 1991
*400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-013-00015-3)	19.00	Jan. 1, 1991
900-999	(869-013-00016-1)	28.00	Jan. 1, 1991
1000-1059	(869-013-00017-0)	17.00	Jan. 1, 1991
1060-1119	(869-013-00018-8)	12.00	Jan. 1, 1991
1120-1199	(869-013-00019-6)	10.00	Jan. 1, 1991
1200-1499	(869-013-00020-0)	18.00	Jan. 1, 1991
1500-1899	(869-013-00021-8)	12.00	Jan. 1, 1991
1900-1939	(869-013-00022-6)	11.00	Jan. 1, 1991
1940-1949	(869-013-00023-4)	22.00	Jan. 1, 1991
1950-1999	(869-013-00024-2)	25.00	Jan. 1, 1991
2000-End	(869-013-00025-1)	10.00	Jan. 1, 1991
8	(869-013-00026-9)	14.00	Jan. 1, 1991
9 Parts:			
1-199	(869-013-00027-7)	21.00	Jan. 1, 1991
200-End	(869-013-00028-5)	18.00	Jan. 1, 1991
10 Parts:			
0-50	(869-013-00029-3)	21.00	Jan. 1, 1991
51-199	(869-013-00030-7)	17.00	Jan. 1, 1991
200-399	(869-013-00031-5)	13.00	[4] Jan. 1, 1987
400-499	(869-013-00032-3)	20.00	Jan. 1, 1991
500-End	(869-013-00033-1)	27.00	Jan. 1, 1991
11	(869-013-00034-0)	12.00	Jan. 1, 1991
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-013-00036-6)	12.00	Jan. 1, 1991
220-299	(869-013-00037-4)	21.00	Jan. 1, 1991
300-499	(869-013-00038-2)	17.00	Jan. 1, 1991
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-013-00040-4)	19.00	Jan. 1, 1991
13	(869-013-00041-2)	24.00	Jan. 1, 1991
14 Parts:			
1-59	(869-013-00042-1)	25.00	Jan. 1, 1991
60-139	(869-013-00043-9)	21.00	Jan. 1, 1991
*140-199	(869-017-00044-2)	11.00	Jan. 1, 1992
200-1199	(869-013-00045-5)	20.00	Jan. 1, 1991
1200-End	(869-013-00046-3)	13.00	Jan. 1, 1991
15 Parts:			
0-299	(869-013-00047-1)	12.00	Jan. 1, 1991
300-799	(869-013-00048-0)	22.00	Jan. 1, 1991
800-End	(869-013-00049-8)	15.00	Jan. 1, 1991
16 Parts:			
0-149	(869-013-00050-1)	5.50	Jan. 1, 1991
150-999	(869-013-00051-0)	14.00	Jan. 1, 1991
1000-End	(869-013-00052-8)	19.00	Jan. 1, 1991
17 Parts:			
1-199	(869-013-00054-4)	15.00	Apr. 1, 1991
200-239	(869-013-00055-2)	16.00	Apr. 1, 1991
240-End	(869-013-00056-1)	23.00	Apr. 1, 1991
18 Parts:			
1-149	(869-013-00057-9)	15.00	Apr. 1, 1991
150-279	(869-013-00058-7)	15.00	Apr. 1, 1991
280-399	(869-013-00059-5)	13.00	Apr. 1, 1991
400-End	(869-013-00060-9)	9.00	Apr. 1, 1991
19 Parts:			
1-199	(869-013-00061-7)	28.00	Apr. 1, 1991
200-End	(869-013-00062-5)	9.50	Apr. 1, 1991
20 Parts:			
1-399	(869-013-00063-3)	16.00	Apr. 1, 1991
400-499	(869-013-00064-1)	25.00	Apr. 1, 1991
500-End	(869-013-00065-0)	21.00	Apr. 1, 1991
21 Parts:			
1-99	(869-013-00066-8)	12.00	Apr. 1, 1991
100-169	(869-013-00067-6)	13.00	Apr. 1, 1991
170-199	(869-013-00068-4)	17.00	Apr. 1, 1991
200-299	(869-013-00069-2)	5.50	Apr. 1, 1991
300-499	(869-013-00070-6)	28.00	Apr. 1, 1991
500-599	(869-013-00071-4)	20.00	Apr. 1, 1991
600-799	(869-013-00072-2)	7.00	Apr. 1, 1991
800-1299	(869-013-00073-1)	18.00	Apr. 1, 1991
1300-End	(869-013-00074-9)	7.50	Apr. 1, 1991
22 Parts:			
1-299	(869-013-00075-7)	25.00	Apr. 1, 1991
300-End	(869-013-00076-5)	18.00	Apr. 1, 1991
23	(869-013-00077-3)	17.00	Apr. 1, 1991
24 Parts:			
0-199	(869-013-00078-1)	25.00	Apr. 1, 1991
200-499	(869-013-00079-0)	27.00	Apr. 1, 1991
500-699	(869-013-00080-3)	13.00	Apr. 1, 1991
700-1699	(869-013-00081-1)	26.00	Apr. 1, 1991
1700-End	(869-013-00082-0)	13.00	[5] Apr. 1, 1990
25	(869-013-00083-8)	25.00	Apr. 1, 1991
26 Parts:			
§§ 1.0-1-1.60	(869-013-00084-6)	17.00	Apr. 1, 1991
§§ 1.61-1.169	(869-013-00085-4)	28.00	Apr. 1, 1991
§§ 1.170-1.300	(869-013-00086-2)	18.00	Apr. 1, 1991
§§ 1.301-1.400	(869-013-00087-1)	17.00	Apr. 1, 1991
§§ 1.401-1.500	(869-013-00088-9)	30.00	Apr. 1, 1991
§§ 1.501-1.640	(869-013-00089-7)	16.00	Apr. 1, 1991
§§ 1.641-1.850	(869-013-00090-1)	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	(869-013-00091-9)	20.00	Apr. 1, 1991
§§ 1.908-1.1000	(869-013-00092-7)	22.00	Apr. 1, 1991
§§ 1.1001-1.1400	(869-013-00093-5)	18.00	[5] Apr. 1, 1990
§§ 1.1401-End	(869-013-00094-3)	24.00	Apr. 1, 1991
2-29	(869-013-00095-1)	21.00	Apr. 1, 1991
30-39	(869-013-00096-0)	14.00	Apr. 1, 1991
40-49	(869-013-00097-8)	11.00	Apr. 1, 1991
50-299	(869-013-00098-6)	15.00	Apr. 1, 1991
300-499	(869-013-00099-4)	17.00	Apr. 1, 1991
500-599	(869-013-00100-1)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–013–00101–0)	6.50	Apr. 1, 1991
27 Parts:			
1–199	(869–013–00102–8)	29.00	Apr. 1, 1991
200–End	(869–013–00103–6)	11.00	Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–013–00105–2)	18.00	July 1, 1991
100–499	(869–013–00106–1)	7.50	July 1, 1991
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–013–00108–7)	12.00	July 1, 1991
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–013–00111–7)	9.00	[6] July 1, 1989
1926	(869–013–00112–5)	12.00	July 1, 1991
1927–End	(869–013–00113–3)	25.00	July 1, 1991
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–013–00115–0)	15.00	July 1, 1991
700–End	(869–013–00116–8)	21.00	July 1, 1991
31 Parts:			
0–199	(869–013–00117–6)	15.00	July 1, 1991
200–End	(869–013–00118–4)	20.00	July 1, 1991
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–013–00121–4)	26.00	July 1, 1991
630–699	(869–013–00122–2)	14.00	July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
800–End	(869–013–00124–9)	18.00	July 1, 1991
33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–013–00127–3)	20.00	July 1, 1991
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–013–00129–0)	14.00	July 1, 1991
400–End	(869–013–00130–3)	26.00	July 1, 1991
35	(869–013–00131–1)	10.00	July 1, 1991
36 Parts:			
1–199	(869–013–00132–0)	13.00	July 1, 1991
200–End	(869–013–00133–8)	26.00	July 1, 1991
37	(869–013–00134–6)	15.00	July 1, 1991
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
39	(869–013–00137–1)	14.00	July 1, 1991
40 Parts:			
1–51	(869–013–00138–9)	27.00	July 1, 1991
52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–013–00140–1)	31.00	July 1, 1991
61–80	(869–013–00141–9)	14.00	July 1, 1991
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–013–00143–5)	29.00	July 1, 1991
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–013–00145–1)	20.00	July 1, 1991
190–259	(869–013–00146–0)	13.00	July 1, 1991
260–299	(869–013–00147–8)	31.00	July 1, 1991
300–399	(869–013–00148–6)	13.00	July 1, 1991
400–424	(869–013–00149–4)	23.00	July 1, 1991
425–699	(869–013–00150–8)	23.00	[6] July 1, 1989
700–789	(869–013–00151–6)	20.00	July 1, 1991
790–End	(869–013–00152–4)	22.00	July 1, 1991

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–013–00153–2)	8.50	[7] July 1, 1990
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–013–00155–9)	11.00	July 1, 1991
201–End	(869–013–00156–7)	10.00	July 1, 1991
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–013–00159–1)	21.00	Oct. 1, 1991
430–End	(869–013–00160–5)	26.00	Oct. 1, 1991
43 Parts:			
1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–013–00164–8)	22.00	Oct. 1, 1991
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–013–00167–2)	26.00	Oct. 1, 1991
1200–End	(869–013–00168–1)	19.00	Oct. 1, 1991
46 Parts:			
1–40	(869–013–00169–9)	15.00	Oct. 1, 1991
41–69	(869–013–00170–2)	14.00	Oct. 1, 1991
70–89	(869–013–00171–1)	7.00	Oct. 1, 1991
90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
140–155	(869–013–00173–7)	10.00	Oct. 1, 1991
156–165	(869–013–00174–5)	14.00	Oct. 1, 1991
166–199	(869–013–00175–3)	14.00	Oct. 1, 1991
200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
47 Parts:			
0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–013–00179–6)	19.00	Oct. 1, 1991
40–69	(869–013–00180–0)	10.00	Oct. 1, 1991
70–79	(869–013–00181–8)	18.00	Oct. 1, 1991
80–End	(869–013–00182–6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1–51)	(869–013–00183–4)	31.00	Oct. 1, 1991
1 (Parts 52–99)	(869–013–00184–2)	19.00	Oct. 1, 1991
2 (Parts 201–251)	(869–011–00185–8)	19.00	Oct. 1, 1990
*2 (Parts 252–299)	(869–013–00186–9)	10.00	Dec. 31, 1991
3–6	(869–013–00187–7)	19.00	Oct. 1, 1991
7–14	(869–013–00188–5)	26.00	Oct. 1, 1991
15–End	(869–013–00189–3)	30.00	Oct. 1, 1991
49 Parts:			
1–99	(869–013–00190–7)	20.00	Oct. 1, 1991
100–177	(869–011–00191–2)	27.00	Oct. 1, 1990
178–199	(869–011–00192–1)	22.00	Oct. 1, 1990
200–399	(869–013–00193–1)	22.00	Oct. 1, 1991
400–999	(869–013–00194–0)	27.00	Oct. 1, 1991
1000–1199	(869–013–00195–8)	17.00	Oct. 1, 1991
1200–End	(869–013–00196–6)	19.00	Oct. 1, 1991
50 Parts:			
1–199	(869–013–00197–4)	21.00	Oct. 1, 1991
200–599	(869–013–00198–2)	17.00	Oct. 1, 1991
600–End	(869–013–00199–1)	17.00	Oct. 1, 1991
CFR Index and Findings Aids	(869–013–00053–6)	30.00	Jan. 1, 1991

Title	Stock Number	Price	Revision Date
Complete 1992 CFR set		620.00	1992
Microfiche CFR Edition:			
Complete set (one-time mailing)		185.00	1989
Complete set (one-time mailing)		188.00	1990
Subscription (mailed as issued)		188.00	1991
Subscription (mailed as issued)		188.00	1992
Individual copies		2.00	1992

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 1992

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
March 2	March 17	April 1	April 16	May 1	June 1
March 3	March 18	April 2	April 17	May 4	June 1
March 4	March 19	April 3	April 20	May 4	June 2
March 5	March 20	April 6	April 20	May 4	June 3
March 6	March 23	April 6	April 20	May 5	June 4
March 9	March 24	April 8	April 23	May 8	June 8
March 10	March 25	April 9	April 24	May 11	June 8
March 11	March 26	April 10	April 27	May 11	June 9
March 12	March 27	April 13	April 27	May 11	June 10
March 13	March 30	April 13	April 27	May 12	June 11
March 16	March 31	April 15	April 30	May 15	June 15
March 17	April 1	April 16	May 1	May 18	June 15
March 18	April 2	April 17	May 4	May 18	June 16
March 19	April 3	April 20	May 4	May 18	June 17
March 20	April 6	April 20	May 4	May 19	June 18
March 23	April 7	April 22	May 7	May 22	June 22
March 24	April 8	April 23	May 8	May 26	June 22
March 25	April 9	April 24	May 11	May 26	June 23
March 26	April 10	April 27	May 11	May 26	June 24
March 27	April 13	April 27	May 11	May 26	June 25
March 30	April 14	April 29	May 14	May 29	June 29
March 31	April 15	April 30	May 15	June 1	June 29

Public Laws

102d Congress, 2nd Session, 1992

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 2nd Session, 1992.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents **Subscriptions** Order Form

S3

Order Processing Code:
* 6216

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!
To fax your orders (202) 512-2233

_____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 2nd Session, 1992 for $119 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

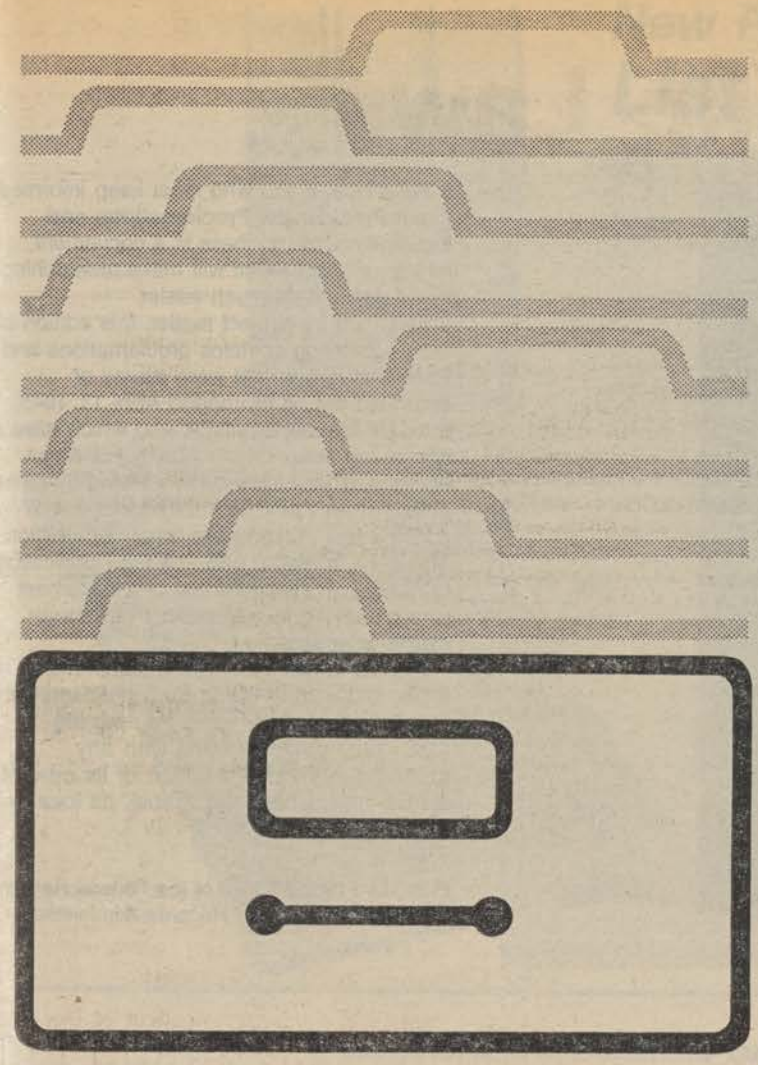
Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1/92)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*** 6788**

P3

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512-2250

☐ **YES**, please send me the following:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00020-7 at $12.00 each.

_____copies of the 1991 SUPPLEMENT TO THE GUIDE, S/N 069-000-00038-0 at $1.50 each.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

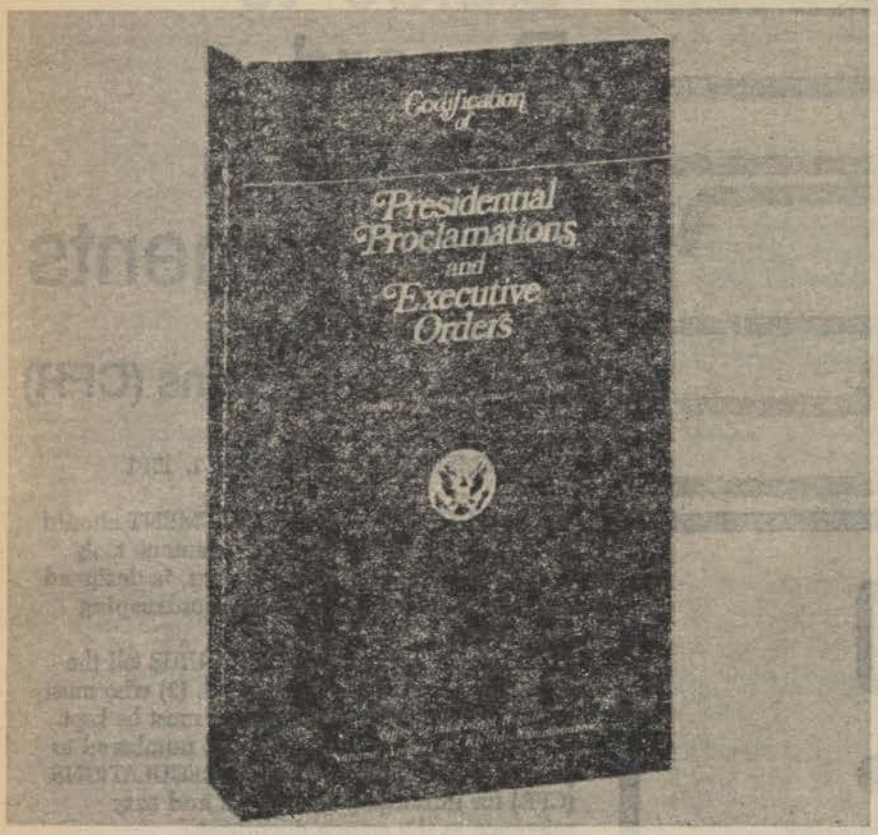
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (12/91)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

.... Order now ! . . . .



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945-1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

---

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
* **6661**

Charge your order. It's Easy!

To fax your orders (202)-512-2250

☐ **YES**, please send me the following:

_____ copies of CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS. S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (12/91)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

New Publication
List of CFR Sections Affected
1973-1985
A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16).....$27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27).....$25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41).....$28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50).....$25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6962**

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-2529

Please Type or Print (Form is aligned for typewriter use.)

Prices include regular domestic postage and handling and are good through 7/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	**FREE**	**FREE**
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, tate, ZIP Code)

( )
(Daytime phone including area code)

Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402-9325

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

Rev 1-91

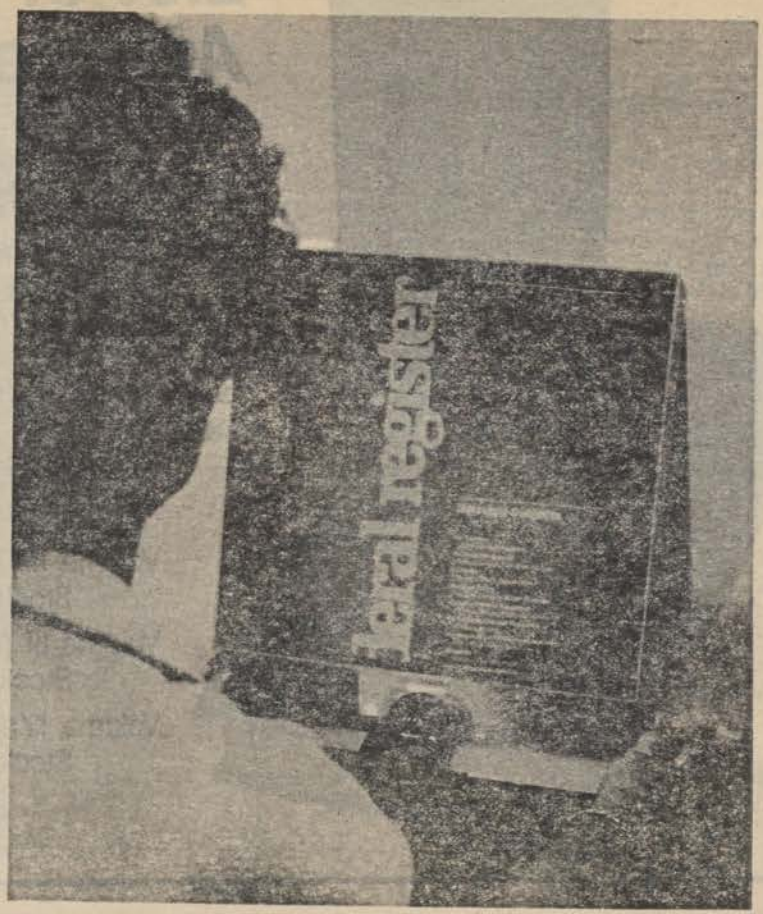
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code
*** 6462**

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

_____ **Federal Register:** _____ One year: $195 _____ Six months: $97.50

_____ **Code of Federal Regulations:** _____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 **(Rev. 2/90)**